

**IN THE COURT OF APPEAL OF SEYCHELLES**

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Reportable  
[2022] SCCA 53 (19 August 2022)  
SCA 68/2019  
(Appeal from CS 68/2016  
[2019]SCSC 919)

In the Matter Between

**Dave Pillay**  
(rep. by Mr Laporte)

**Appellant**

and

**Milena Nourrice**  
(rep. by Mr Bonte)

**First Respondent**

**Michel Florentine**  
(rep. by Mr Ferley )

**Second Respondent**

**H. Savy Insurance**  
(rep. by Mr Rajasundaram)

**Third Respondent**

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**Neutral Citation:** *Pillay v Nourrice & Ors* (SCA 68/2019) [2022] SCCA 53  
(Arising in CS 68/2016) (19 August 2022)

**Before:** Twomey, Robinson, Tibatemwa-Ekirikubinza, JJA

**Summary:** Civil Code of Seychelles - Road traffic accident - damages resulting from the operation of two motor vehicles – acknowledgement of liability by the appellant – assessment and award of damages. Appeal dismissed

**Heard:** 2 August 2022

**Delivered:** 17 August 2022

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**ORDER**

(i) This appeal is dismissed in its entirety

(ii) We uphold the orders of the learned Judge

(iii) With costs in favour of the first, second and third respondents

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**JUDGMENT**

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**THE INTRODUCTION**

1. This is an appeal from a judgment of a learned Judge of the Supreme Court who, in an action where the first respondent brought proceedings against the second respondent, the appellant and the third respondent for damages arising out of a road traffic accident involving a motor car bearing registration No. S12191, owned by her, gave judgment in her favour. Before the Supreme Court, the first respondent was the plaintiff, the second respondent was the first defendant, the appellant was the second defendant, and the third respondent was the third defendant.
2. In her plaint, the first respondent sought the following orders from the Supreme Court —
  - "(i) The Defendants pay the Plaintiff the claim the total sum of SR385,000/- being loss of vehicle which vehicle has been right off as per claim above-referred and further for loss of use and moral damages;*
  - (ii) The Defendants pay to the Plaintiff costs of proceedings and interest thereon; and*
  - (iii) To any other reliefs that this Honourable Court seems fit in the circumstances of the case".*

**The evidence relevant to this appeal**

3. Before considering the parties' contentions concerning the grounds of appeal, we set out the evidence relevant to this appeal.
4. The first respondent testified that she left her car with the second respondent for him to fix the bumper when she left for Sri Lanka on the 10 December 2015 with her family. Her car did not have a valid road fund licence. She did not inform the second respondent of this. Regarding the amount of damages claimed, she testified that the damages sought

include costs of taxis and public transport and repair costs to her car. The car was new when she purchased it in 2014 for SCR200000. She borrowed SCR50000 from the bank to take care of the damage to her car. She was still paying the said loan.

5. The second respondent testified that he is a licensed mechanic and that the first respondent, the owner of the car, had entrusted the car to him for repairs while she was away. He collected the car from the airport and drove it to his garage at La Misere, where he repaired the bumper and the water reservoir. After a head-on crash involving the appellant's pickup on the 13 December 2015, he learned that the car did not have a valid road fund licence.
6. The accident occurred while the second respondent was driving the car on La Misere road towards Grand Anse. The appellant, driving his pickup in the opposite direction to the second respondent, drove into the second respondent's lane and collided with the car. The car suffered damage to the cap, bumper, windscreen, guard bow, radiator and air conditioning system.
7. The appellant accepted on personal answers and while giving evidence that he was on the wrong side of the road at the time of the crash. He was not in his lane as he was overtaking. The car in front of him had signalled for him to overtake. As he pulled out to overtake (onto the other side of the road), there was a '*blockage*', so he could not get back into his lane. He also claimed that the second respondent accelerated his vehicle when he saw his pickup coming towards him. Hence, the two vehicles collided. He had asked the third respondent to pay for the damage to the first respondent's car, which it refused.
8. Mr Furneau testified that the first respondent had a third-party insurance policy for the car at the time of the accident with the third respondent. After the road traffic accident, she claimed with the third respondent concerning the damage to her car. The third respondent did not pay because she did not have a valid road fund licence. Mr Furneau testified that the appellant had a comprehensive insurance policy with the third respondent. The appellant reported the road traffic accident to the third respondent. He

did not claim for the damage to his vehicle but instead paid for the repairs to his vehicle himself. The third respondent did not pay the first respondent under the appellant's insurance policy because she did not have a valid road fund licence.

## **THE APPEAL**

9. The learned Judge found that the road traffic accident had occurred due to the appellant's imprudence and negligence, whom she stated had acknowledged liability for the accident. Having determined the quantum of damages payable by the appellant, the learned Judge made the following orders in favour of the first respondent —

- " (a) *The Plaintiff's Complaint is dismissed in relation to the first Defendant;*
- (b) *The Plaintiff's Complaint is granted in relation to the second Defendant;*
- (c) *The Plaintiff's Complaint is dismissed in relation to the third Defendant;*
- (d) ***The second Defendant is to pay the Plaintiff the sum of Seychelles Rupees Eighty-Five Thousand SC85,000/- in damages, being Seychelles Rupees Eighty Thousand SR80,000/- in damages and Seychelles Rupees Five Thousand SR5,000/- for loss of use;***
- (e) *Costs and interests are paid by the second Defendant ". [Emphasis supplied]*

10. The appellant appealed against the judgment on the following grounds —

- "1. *The learned Judge failed to appreciate the legal implications and consequences while shifting the liability on the part of this Appellant, of a vehicle allowed to be driven without a valid fund license.*
- 2. *The decision of the discharge of the liability of the insurance company the 3<sup>rd</sup> Respondent by the learned Judge is erroneous both in law and in facts.*
- 3. *The decision of the learned Judge that the admission of this Appellant as to his liability in discharging the 3<sup>rd</sup> Respondent's legal liability is erroneous, while the learned Judge failed to appreciate the faults on the*

*part of the 1<sup>st</sup> Respondent (Plaintiff) and the 2<sup>nd</sup> Respondent (1<sup>st</sup> Defendant).*

4. *The learned Judge failed to hold the 2<sup>nd</sup> Respondent (first Defendant) liable however, a fault is found on him in terms of driving the vehicle without a road fund license and further failed to hold the 1<sup>st</sup> Respondent (Plaintiff)) liable for having allowed a driver to drive the vehicle without a road fund license.*
5. *The decision of the learned Judge for an award against this Appellant in the sum of SR85,000.00 (Eighty-five thousand) is irrational and manifestly excessive.". Verbatim*

### **Analysis of the parties' contentions**

11. We have considered the skeleton heads of argument submitted by the appellant in support of his grounds of appeal and the written submissions submitted on behalf of the first, second and third respondents with care.
12. We note that the skeleton heads of argument submitted by the appellant are repetitive, quite challenging to read and raised various issues not envisaged in these grounds of appeal. We have not considered any issue that falls outside the grounds of appeal.

#### *Grounds one, three and four*

13. With respect to grounds one, three and four, the skeleton heads of argument of the appellant essentially contended that the learned Judge was wrong not to have concluded that if there was negligence on his part, the accident was contributed to by the negligence of the second respondent.
14. In his statement of defence, the appellant denied that the accident was caused by his imprudence and negligence. Instead, he averred that the accident was caused solely by the imprudence and negligence of the second respondent. He also pointed out that the learned Judge should have considered that the second respondent drove a car that did not

have a valid road fund licence. It suffices to state that the absence of a valid road fund licence did not affect the appellant's liability in this case.

15. We observe that the appellant did not plead contributory negligence: see, for example, *Jumaye v Government of Seychelle, represented by the Attorney-General [1979] SLR 103 at p. 106*. Moreover, the appellant had acknowledged liability in this case — while being cross-examined by Counsel for the third respondent and on his personal answers, the appellant acknowledged that the accident was caused by his imprudence and negligence.
16. For the reasons stated above, we conclude that the learned Judge was correct to conclude that the appellant's negligence and imprudence were responsible for the head-on crash. Hence, grounds one, three and four are devoid of merit and stand dismissed.

*Ground two*

17. The skeletons heads of argument submitted concerning this ground contained issues neither raised in the pleadings nor envisaged in this ground of appeal.
18. Having considered the skeleton heads of argument with care, we understood the appellant's contention to be that *"the learned Judge omitted to consider the liability of the insurance Company covering this Appellant"*. The skeleton heads of argument went on to submit that *"the Motor Vehicles Insurance (Third Party Risks) Act (Cap 135) was relevant to such cause of action and ought to have been considered by the Learned Judge in that the insurer is ultimately liable to pay the Appellant under comprehensive insurance policy"*. These issues which do not arise on the pleadings are irrelevant in this case. The learned Judge, in her judgment, remarked that they had arisen during the hearing and written submissions of the parties.
19. Ground two of the grounds is without merit and stands dismissed.

*Ground five*

20. Ground five questioned the assessment and award of damages made by the learned Judge against the appellant. The skeleton heads of argument essentially submitted that the learned Judge erred in law and the evidence in awarding damages against him in that the award of damages was manifestly excessive, and there was no evidence to prove the damages awarded by the learned Judge.
21. It is trite law that an appellate court will not alter damages awarded by a trial court merely because it thinks it would have awarded a different figure, but rather the appellate court would interfere with the amount of damages awarded only if: (i) the trial court acted on the wrong principle; or (ii) the amount of damages is extremely high or extremely low to make it an erroneous estimate: see, for example, *Michel & Ors v Talma & Ors* (SCA 22/10) and *Government of Seychelles v Rose* (SCA14/2011).
22. The appellant did not seek to explain in his skeleton heads of argument and at the appeal why the damages awarded by the learned Judge were manifestly excessive. In support of this ground of appeal, the skeleton heads of argument appeared to contend that the learned Judge should have considered that the negligence of the second respondent contributed to the accident or that the accident was caused solely by the negligence of the second respondent.
23. Considering the appellant's contentions concerning this ground, we conclude they are without merit. Hence, ground five stands dismissed.

## **THE DECISION**

24. The appeal is dismissed in its entirety.
25. Accordingly, we uphold the orders of the learned Judge.
26. With costs in favour of the first, second and third respondents before the Supreme Court and the Court of Appeal.

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F. Robinson, JA

I concur

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Dr. M. Twomey-Woods, JA

I concur

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Dr. L. Tibatemwa-Ekirikubinza, JA

Signed, dated and delivered at Ile du Port on 19 August 2022.