

**Confiance v Allied Builders Seychelles  
(1998) SLR 164**

Philippe BOULLE for the plaintiff  
Kieran SHAH for the defendant

**Judgment delivered on 21 July 1998, by:**

**PERERA J:** The plaintiff sues the defendant Company for damages consequent to injuries suffered by him in the course of employment. It is averred that on 15 April 1996, the plaintiff was requested by an employee of the company to unload a container of glass panels and that while unloading, the panel fell and injured both of his legs. He avers that the accident occurred due to the fault and negligence of the company in failing to provide adequate assistance and protection to him.

According to the medical certificate issued by Dr Alexander Korythicov, the injuries were as follows:

- Three cut wounds at the front of the right thigh;
- a cut injury to the patella tendon penetrating to the joint of the right knee;
- cut injury to the muscular quadriceps and muscular vastus medialis in the middle;
- laceration over right patella; and
- four cut injuries to the left ankle and foot.

The defendant admits liability and hence it remains for this Court to determine the quantum of damages. The plaintiff claims the following –

1.	Pain, suffering, anxiety, distress and discomfort	R 80,000
2.	Permanent disability, infirmity and loss of amenities of life	R120,000
3.	Loss of future earnings R1000 per month for 30 years	R360,000
4.	Cost of medical report	<u>R 1,000</u>
		<u>R561,000</u>

As regards the injuries suffered, the medical report (exhibit P1) states that the various injuries mentioned therein were repaired and the laceration sutured in the course of a surgical operation performed on 15 April 1996, the day he was admitted to the hospital.

His right leg was cast in cylinder plaster of paris for four weeks. He was discharged on 1 May 1996, and the plaster cast was removed on 28 May 1996. Thereafter physiotherapy treatment was commenced. Dr Alexander in his testimony stated that the plaintiff now had muscle wasting on his right thigh and that the diameter of his right thigh is less than that of the left thigh. As a prognosis, he also stated that the injury to the joint may cause osteo-arthritis. Assessing the disability, Dr Alexander stated that there was a residual disability of about 10% on the right leg, and consequently the plaintiff would not be able to use that leg as before. This, he stated, was due to the severing of the patella tendon which has to be sutured, and the injury to the muscular quadriceps and muscular vastus medialis which was the same main muscle of the leg. Hence there was an injury to both muscle and tendon of the right leg.

The injury to the left leg however was limited to a laceration of the skin. Photograph (exhibit P3) shows the laceration marks. The photographs exhibits P2 and P4 taken with the plaster cast before it was removed on 28 May 1996 show that the plaintiff was using his left leg normally and that the injuries mentioned by Dr Alexander were mainly to the right leg.

On the basis of the medical report, the plaintiff, who is 35 years old, was hospitalised for a period of 2 weeks. His right leg was in plaster cast for about 1½ months. The Plaintiff in his testimony stated that he could not stand for a long time. He further stated that he had played football for the Baie Lazare football team for 15 years, but could not play now. He further stated that in his spare time he did metal work for private contractors and earned around R3,500 – R5,000 per month in addition to his monthly income from the defendant company, or around R2,079 per 21 working days. He also claimed that he could not climb trees to pick breadfruit or jack fruit for the pigs he reared.

Mr Benji Kouki Patel, the director of the defendant company, testified that the plaintiff was employed by his company as a steel fixer and bender for about 9 to 10 years and that after his accident and the consequent hospitalisation and treatment, he has resumed work. He further stated that it was the intention of his company to continue to employ him.

The plaintiff himself admitted that subsequent to the accident he did his normal work from 7.30 am to 4 pm and sometimes on Saturdays as well. He also worked overtime.

Philip Rath, (PW2) a building contractor for whom the plaintiff worked in his spare time as a sub-contractor, testified that the plaintiff continued to work after the accident, but that this work was slower than before.

Witnesses Jimmy Philoe (PW3) and Michel Benoit (PW4) testified that the plaintiff played football for the Baie Lazare team, and that in his spare time he reared pigs.

In awarding delictual damages for personal injuries, this Court has sought to maintain a certain amount of consistency in respect of particular types of injuries and at the same

time been flexible when the circumstances and nature of the injuries in a particular case demanded a deviation from the general pattern. In this respect, previous awards in comparable cases remain to be an important and useful guide. Lord Morris in the Privy Council case of *Singh v Toong Omnibus Co* [1964] 3 All ER 925 stated thus –

If, however, it is shown that cases bear a reasonable measure of similarity, then it may be possible to find a reflection in them of general consensus of judicial opinion. This is not to say that damages should be standardised, or that there should be any attempt at rigid classification. It is but to recognise that since in a court of law compensation for physical injury can only be assessed and fixed in monetary terms, the best that court can do is to hope to achieve some measure of uniformity by paying heed to any current trend of considered opinion. As far as possible, it is desirable that two litigants whose claims correspond should receive similar treatment, just as it is desirable that they should both receive fair treatment.

In the case of *Ruiz v Borremans* (unreported) Civil Appeal 22/1994 and *State Assurance Corporation v Gustave Fontaine* (unreported) Civil Appeal 41/1997, the Court of Appeal considering awards made without any basis or justification emphasised the need to consider awards in comparable cases in assessing damages in personal injury cases, and stated that such conventional figures could serve as a starting point for assessments. Accordingly I would proceed to consider a cross section of awards made by this Court in respect of injuries caused to limbs.

In the case of *Sedwick v Government of Seychelles* (unreported) C S 138/1989, the plaintiff sustained injuries to his knee and ankle, dislocation of the knee and rupturing of the lateral popliteal nerve. He developed a permanent foot drop deformity and had to use a spring appliance to assist his mobility. The permanent disability was assessed at 10%. Georges J awarded him R15,000 for pain and suffering and R20,000 for permanent disability, inconvenience and loss of amenities.

In *Simon Maillet v Francis Louis* (unreported) CS 177/1990 the plaintiff suffered a fracture of the left tibia and fibula resulting in incapacitation for a period of about 6 months and a permanent disability of 25% in the use of his left leg. He had been engaged in sports, especially boxing, but could not pursue these activities any longer. I awarded him R30,000 for pain and suffering and the 25% permanent disability and R10,000 for loss of amenities and enjoyment of life.

In *Sinon v Kililindo* (unreported) CS 255/1992 the plaintiff suffered a compound comminuted fracture of the right tibia and fibula. He was 20 years old and was an active sportsman. As trial judge I awarded R15,000 for pain and suffering and R20,000 for loss of amenities of life.

In *Rene Youpa v Y Jupiter* (unreported) CS 28/1992 the plaintiff was a reputed sportsman in the field of body building and weight lifting and was also a physiotherapist. He suffered a fracture of his leg which required the insertion of a metal pin. After the

plaster cast was removed he fractured the same leg again while walking. He was later treated abroad.

Alleear CJ awarded him R20,000 for pain and suffering and R10,000 for the permanent disability and R15,000 for loss of amenities, prospects and enjoyment of life.

In the case of *Ruiz v Borremans* (supra) the plaintiff suffered a fracture of the left third metatarsal bone. On a medical assessment he had a partial permanent invalidity of 5% and a further permanent invalidity of 5%. Bwana J awarded R50,000 for pain and suffering and R30,000 for permanent disability, making a total of R80,000 for moral damages alone. Adam JA in reducing the awards stated –

Since his judgment in silent as to the criteria he applied in his assessment of the damages that he awarded, and as the aim in arriving at the figure is to see that “justice meted out to all litigants should be evenhanded instead of depending on idiosyncrasies of the assessor”, the Court can only come to the conclusion that the learned Judge did not seek guidance from comparable cases.

Ayoola JA also stated –

There is really on the totality of the circumstances of this case nothing extraordinary to justify an award which in its side is much out of time with the level of awards in comparable cases.

Goburdhun P also observed that the injuries sustained by the plaintiff were not of a serious nature and that the permanent incapacity was also very low. Therefore the Court of Appeal unanimously reduced the sum of R80,000 for moral damages to R40,000 to keep in line with the comparable awards.

In the case of *Gustave Fontaine v S A Cos* (Supra) the plaintiff suffered a fracture in the right third lower part of the humerus. Details of the injuries sustained were; a deformed right upper arm, puncture wound with mild bleeding at 1/3<sup>rd</sup> distal area of the posterior side of the upper arm, 1 cm x 3 cm. The plaintiff claimed a total sum of R307,000 which included a sum of R60,000 for pain and suffering, R18,000 for loss of future earnings – the defendant corporation defaulted appearance, and the case proceeded ex parte – Bwana J awarded the full sum of R307,000 against the defendant. On appeal, the Court of Appeal, in Civil Appeal 41/1997 delivered on 9 April 1998, once again considered the comparable cases and reduced the award for pain and suffering to R15,000 and loss of earnings to R25,000.

Jurisprudence in Seychelles is now well settled that save in cases where there are exceptional reasons to deviate, the Court must maintain consistency in making awards. It would be only then that justice would be meted out to all litigants.

On a comparison of the cases considered above, the instant case does not fall into any

extraordinary category to permit an award beyond the level of awards made in comparable cases. The residual incapacity of 10% on the right leg has, on the basis of the evidence, not affected the plaintiff to any appreciable extent as he is still engaged in the same occupation, earning about the same income both from the defendant company and from work done in his spare time. As regards his sports activities, namely playing football for a team, witness Mitchell Benoit (PW4) stated that the Baie Lazare team is not composed of younger players. However, the inability of the plaintiff to play football for pleasure or as a recreation cannot be discounted. Further as regards his ability to rear pigs due to his inability to climb trees to pick breadfruit and jack fruit, it must be considered that he could get the assistance of someone even if it involves payment for such a service.

As regards the prognosis that the plaintiff may develop osteo-arthritis on his right leg, Dr Alexander himself stated that such a condition could be avoided if that limb was exercised. In any event damages become payable for prospective prejudice only where the occurrence of such prejudice is certain.

I agree with counsel for the defendant company that the claims are excessive. The instant case is comparable with the injuries suffered by the Plaintiff in the *Borremans* case (supra). On a consideration of the awards made in all comparable cases discussed above, I make the following awards.

1. Pain and suffering, anxiety,  
distress and discomforts R15,000
2. Permanent disability, infirmity  
and loss of amenities of life R25,000

As regards loss of future earnings, on the basis of the evidence, the plaintiff is able to continue his occupation at the defendant company without any loss or reduction of wages. The claim for future earnings has been made however on a reduced rate of R1,000 per month, but for 30 years. The amount of R1,000 was an assessment of the income from the piggery and extra work done by the plaintiff.

In the cases of *United Concrete Produces (Sey) Ltd v Albert* (unreported) Civil Appeal 19/1997 and *State Assurance Corporation v Gustave Fontaine* (supra), the Court of Appeal viewed the multiplicand and multiplier method of computing loss of future earnings with disfavour and stated that such a method should be avoided. In this respect Ayoola JA stated:

In determining what the plaintiff would have earned but for the injury and what he is likely to earn, and also in determining the multiplier, a host of factors which may appear speculative make the task of qualifying the plaintiff's loss one which cannot produce a mathematically accurate result.

In assessing loss of future earnings, the primary consideration is the income received

from the main, stable source of income from one's chosen occupation or profession. Income from other sources, for the purpose of assessing delictual damages for loss of future earnings, should be considered as purely ancillary as a person may terminate that source of income at any time for reasons unconnected with any injury suffered by him. The only certain factor is therefore the main source of income from one's profession or occupation which he would in the normal course of events pursue until he retires.

However, taking into consideration the fact that due to his residual incapacity his income from all sources would necessarily be affected to some limited degree, I award a sum of R10,000 under that head. In addition the Plaintiff will be entitled to a sum of R1,000 paid for the medical report.

Judgment is accordingly entered in favour of the plaintiff in a sum of R51,000 together with interest and costs.

**Record: Civil Side No 226 of 1997**