Joseph v Payet
(2003) SLR 102

France BONTE for the Plaintiff
Dora ZATTE for the Defendant

Judgment delivered on 23 July 2003 by:

PERERA J: The case for the Plaintiff is that, on 27 February 2002, he delivered a load of "crusher dust" at the Defendant's residence at Point Larue in his pick up bearing no. S. 4944. He avers that the Defendant thereafter "closed and padlocked his gates" and has prevented him from removing his pick-up. He claims R36,600 for loss of use of his vehicle and for hiring other vehicles to transport workers and materials.

The Defendant in his statement of defence denies that the pick-up vehicle is being detained by him since 27 February 2002 and avers that the Plaintiff was, by letter dated 8 March 2002 informed that he could remove it from the premises.

The Plaintiff testified that on 27 February 2002, after he delivered a load of crusher dust, the Defendant fixed a chain across the vehicle and padlocked it, thus preventing the vehicle from being moved. He made a complaint at the Anse Aux Pins and Cascade Police Stations. The Police Officers asked him to remove the chain, but he refused and threatened to block the vehicle with a big boulder.

On 10 June 2002, the Plaintiff filed a motion seeking an order, on the Defendant to release the vehicle. This Court by order dated 4 November 2002 granted the order. However the Plaintiffs stated that he did not go to remove the vehicle as he did not receive a copy of the order. As there has been negligence on his part in obtaining a copy, his claim for loss of use, will be limited up to 4 November 2002.

At the hearing of 17 February 2003 Learned Counsel for the Defendant informed the Court that the Defendant had no objections to the pick up being removed by the Plaintiff at any time. Accordingly an order was made on 17 February 2003, by consent of both parties that the Plaintiff be permitted to enter the Defendant's premises and remove the pick-up. It was further agreed and ordered that the Defendant shall remove the chain and other obstructions to enable the Plaintiff to remove the pick-up peacefully. That order, if not already complied with, is confirmed in this judgment.

The remaining issue is therefore the quantum of damages claimed by the Plaintiff. The Plaintiff testified that he was a building contractor, and that he employed workers. He stated that the Defendant did blasting work for him, but that he did not owe him any money. He further stated that the Defendant blocked his pick-up, not because he owed him money but because he had delayed delivering the load of crusher dust.

The Defendant testified that he did blasting work for the Plaintiff. There were three

invoices for payment, but the Plaintiff asked him to wait till he re d payment from his clients. On the first invoice for R40,000, he paid R30,000 by a ue drawn on Habib bank. He promised to pay him another R25,000, but instead l him only R5,000. Thereafter, the Plaintiff did not make any payments, hence h ided to "seize" his pick-up, until he received his payments. He ordered 3 tons usher dust, but the Plaintiff took nine days to deliver it. So he obstructed the picku n his car, and fixed a chain with a lock, across, preventing it from being moved. V the Police Officers came he told them that the pickup could be removed wher Plaintiff made the payments. The Plaintiff came once and removed a spanner a n iron bar from the pickup, but did not come to remove the vehicle.

The Defendant also testified that he saw the Plaintiff using hi ehicles to transport his workers and building materials. He sent a letter dated 8 n 2002 through his lawyer requesting the Plaintiff to remove the pick up after pay of his invoices, but he did not come. The Defendant further testified that the Plaint ed his own pick-up, together with hired vehicles in most of his construction work, transporting of his workers.

At the conclusion of his evidence, the Defendant agreed to allo Plaintiff to remove the pickup and stated that he would claim the amount due to hi another case which he had already filed in this Court.

On the basis of the evidence in the case, it is admitted by Defendant that he detained the Plaintiffs pick up after a load of crusher dust wa vered at his place. Although the Plaintiff claims that such detention was done to s im for delaying the delivery, it is more plausible that it was done, more as a "sei to obtain payment claimed by the Defendant. Was the Defendant entitled so eize" or detain the Plaintiffs vehicle? As was held by this Court in *Balusamy Pillo* *Bonne* (C.S. 448 of 1999), a motor vehicle cannot even be provisionally seized u Section 280 of the Civil Procedure Code after an action has been instructed. Tha on the basis of the interpretation of Article 533 of the Civil Code which provides ne word "movable" does not include, inter alia, vehicles, the extra judicial "seiz of a motor vehicle, admittedly being used by the Plaintiff in the course of his p sion as a building contractor was therefore unlawful. Neither was he empowered etain the vehicle as security for a debt owed. The Defendant has only now decide release the pick-up from "seizure" and to pursue his claim against the Plaintiff in a separate suit. He will therefore be liable in damages for the economic loss caused to the Plaintiff through his own folly.

The Plaintiff testified that in the course of his business, he had to hire pick up vehicles to transport materials and his workmen to building sites during the time the Defendant detained his own pick up. He also had to hire cars. In the particulars of damages, the Plaintiff claims for loss of use of his vehicle from 15 March 2002 to 30 April 2002 and continuing damages thereafter up to date of judgment, at the rate of R205 per day. He testified that although his vehicle was detained by the Defendant on 27 February 2002, he has claimed only for actual days when it became necessary to hire a pick up. Up to

30 April 2002 therefore he claims only for 44 days. That, at the rate of R205 per day, would be R9,020. However, the invoice issued to the Plaintiff by one Ivan Anacoura, the owner of pick up bearing no. S. 7101 (exhibit PI) substantiates the claim for 24 trips done in transporting building materials for him. At the rate of R205 per day, as claimed, the total amount would be R4920. The invoices from Ronny Barallon (exhibit P2) shows that 58 trips had been done at the rate of R150 per trip. Hence the total amount would be R8,700. The Plaintiff also produced receipts from Norman's Car Hire, one dated 17 June 2002 for R8,525 and another a deposit for R4,500.

There was also produced receipts, from "Tropicar" one dated 4 October 2002 for R3,500 and another dated 30 October 2002 for R7,100. (exhibit P3) two other receipts dated 4[t] December 2002 and 3 February 2003 are not considered as relevant as this Court had by order dated 4 November 2002 permitted the Plaintiff to inspect and remove the pick-up.

Admittedly, the Plaintiff was engaged in building construction work on three sites simultaneously during the relevant period. The Court agrees with the Defendant that the Plaintiff usually hired other vehicles among his own, to transport building materials and workers. Indeed the load of crusher dust was delivered at the Defendant's premises in the pickup of the Plaintiff.

The claim for loss of use has been based on the premise that the Plaintiffs pick up had been solely used daily, and due to the "seizure", an alternative vehicle had to be hired. Hence in view of the finding of this Court that the Plaintiff would have hired other vehicles even before his own vehicle was "seized", it would be equitable that only 50% of the costs claimed be awarded. I would therefore quantify the award as follows-

1.	Amount paid on Ivan Anacoura's Invoices (15.3.02 to 29.4.02)	= Rs.4,920	50% 2,460.00
2.	Amount paid on Ronny Barallon's Invoices (28.5.02) to 11.6.02)	= Rs. 8700	4,350.00
3.	Amount paid to Norman's Car Hire (17.6.02)	= Rs. 8525	4,282.10
4.	Amount paid to "Tropicar" (4.10.02 and 30.10.02)	= Rs. 10,600	5,300.00
			16,392.10

Judgment is accordingly entered in favour of the Plaintiff in a sum of R16,392.10 together with interest and costs taxed on the Magistrates' Court Scale of Fees and Costs.

Record: Civil Side No 188 of 2002