

**Camille & Ors v De Sergio
(2003) SLR 52**

France BONTE for the Plaintiff
Bernard GEORGES for the Defendant

Appeal by the First Plaintiff was allowed on 5 December 2003 in CA 03 of 2003.

Judgment delivered on 17 February 2003 by:

KARUNAKARAN J: At all material times, one Michel Camille, a young man, aged 26 hereinafter referred to as the "deceased" was employed by the Defendant, to work as labourer on board a Spanish Fishing Vessel, "Mar De Sergio". It is not in dispute that on 7 October 1995, at around 9.15 am when the deceased was working in the vessel he met with an accident, which occurred due to operation of a machine on board the vessel. As a result, the deceased suffered fatal injuries and died instantaneously.

The deceased was unmarried. He had no children. He is survived by his mother, brothers and sisters. They are the Plaintiffs in this action. The mother of the deceased namely, Plaintiff No: 1 and the brothers and sisters of the deceased namely, Plaintiff No: 2 to 6 have now jointly instituted this action against the Defendant for damages alleging that the death was caused solely by the negligence of the Defendant's employee.

On the other side, the Defendant in its statement of defence totally denies liability and the claim of the Plaintiffs. However, the Defendant adduced no evidence in support of defence or in rebuttal of the evidence adduced by the Plaintiffs.

It transpires from the evidence on record that one Nigel Pillay, a co-worker who was working on the vessel with the deceased witnessed the accident. He gave a statement -exhibit P3 - to an Insurance Company explaining as to how and why the said accident happened. According to this witness, the accident occurred due to the negligence of another employee of the Defendant, a Spanish national who was operating the machine at the material time. The said operator having had an involved conversation with one of his friends carelessly switched on the machine whilst the deceased was still loading the fish on a conveyor belt attached to the machine. As a result, according to this eyewitness the deceased was caught into the machine, suffered fatal injuries and died on the spot.

On autopsy, the medical examination revealed that the deceased had sustained a 5 c. m laceration over left cheek, multiple abrasions over skull, neck, shoulders, back arm, and forearm. There was also compound fracture of the right humerus, multiple fractures of 1-4 ribs of right rib cage, fracture of right scapula and metacarpal bones of hands. The pathologist who did the autopsy concluded that the death in the deceased had occurred due to haemorrhagic shock because of "polytrauma" with multiple fractures and haemothorax.

In these circumstances, the Plaintiffs contend that the said accident was caused solely by the negligence of the Defendant's agent or servant who was operating the machine at the relevant time. Further, the Plaintiffs contend that consequent to the death of the deceased they all underwent pain, suffering, and loss of moral comfort for which the Defendant is liable in moral damages, which is estimated by the Plaintiffs at R200,000 for the First Plaintiff and R40,000 for each of Plaintiffs No: 2 to 6. It is also the case of the Plaintiffs that the deceased during his life-time, had lived with his mother the First Plaintiff and was contributing towards her maintenance and welfare. Hence, the mother claims that she suffered loss of maintenance and support because of the sudden demise of her son. Therefore, the Plaintiffs pray this Court for a judgment ordering the Defendant to pay damages in the total sum of R400,000 with costs.

Having carefully considered the entire evidence on record I find the following facts have been established - on the preponderance of probabilities - and to my satisfaction:

1. On 7 October 1995, Michel Camille died of the injuries he sustained in the accident, which occurred during the course of his employment with the Defendant on board the fishing vessel "Mare De Sergio."
2. The accident was caused solely by the negligence of the Defendant's employee, the operator of the said machine.
3. The Defendant is vicariously liable in damages for the negligent act committed by its employee.
4. The First Plaintiff is the mother and Plaintiffs 2 to 6 are the brothers and sisters of the deceased Michel Camille.
5. The death of the deceased did cause the Plaintiffs suffering, pain and loss of moral comfort for which the Defendant is liable to them in moral damages.
6. The Plaintiffs in their respective capacities as a parent, brothers and sisters are entitled to moral damages in light of the principles applied in *James v Jumeau* (supra).

On the assessment of damages, I remind myself of the principles laid down in the Mauritian cases of *Gopal v Mooneram* 1936 MR 37 and *Rahiman v Gopal* 1937 MR 106 and in the local case of *Louise and ors v Union Lighterage and Co Ltd* 1988 SLR. I respectfully agree with them in that grief or affliction over death should never be allowed as an opportunity for coining profit and to turn a family bereavement into pecuniary advantage. Obviously, the Plaintiffs were not dependent on the deceased in this case. At any rate, there is no evidence on record to that effect. In the circumstances, I find that the Plaintiffs did not sustain any financial loss consequent to the death of the deceased. Moreover, I note, since the death was concomitant with the injuries the legal

heirs of the deceased could only sue in their own rights and they may be awarded only moral damages- vide *Elizabeth and ors v Morel and Ors* (supra).

Undisputedly, the deceased had been living with his mother the First Plaintiff, providing financial and moral support to her. It is therefore reasonable to hold that the mother of the deceased suffered more mental anguish and grief due to loss other son, than the ones suffered by his brothers and sisters. In assessing the quantum of moral damage payable to the Plaintiffs I take into consideration the amounts awarded in the following cases:-

1. In *Elizabeth and ors v Morel* (supra) the brothers and sisters of the deceased were awarded R3000 jointly as moral damage for the pain, distress and anxiety suffered by the deceased before her death and R2,000 each as moral damages in their own right for the grief caused to them by the death of the deceased.
2. In *Louise and others v Union Lighterage Co Ltd* (supra) the adult children of a 54 year-old deceased were awarded R1500 each save the last child a minor dependent was awarded R16,500 as material damage.
3. In *Dubois and Ors v Albert and Another* (supra) following the death of a 16 year old boy, which occurred 30 minutes after the injury, apart from awards "ayant droit" in their own capacity the mother was awarded R16,000 and the siblings were awarded R3000 each as moral damages.

Basing my assessment on the quantum of damages determined in the above cases, as well as taking into account the fact that the cost of living has considerably increased since those determinations, I would award the Plaintiffs the following sums in this matter:

- Moral damage for the first Plaintiff in the sum of R20,000
- Loss of material or financial support for the first Plaintiff globally in the sum of R10,000
- Moral damage for Plaintiffs No: 2 to 6, at R4000 each, totaling in the sum of R20,000

Total R50,000

In the result, I enter judgment for the Plaintiffs in the total sum of R50,000 with costs.

Record: Civil Side No 255 of 1999