

**Alexis v Sinon & Or
(2004) SLR 84**

Frank ELIZABETH for the Plaintiff
Ramniklal VALABHJI for the Defendant

Judgment delivered on 17 May 2004 by:

JUDDOO J: This is a tortious claim brought by the Plaintiff against the First Defendant, owner and driver of vehicle bearing registration S 709, and the Second Defendant, the company with which the First Defendant had an insurance policy.

On 31 May 1997 the Plaintiff, whilst travelling as a passenger in vehicle S 709 driven by the First Defendant, suffered injuries when the said vehicle was involved in a road accident. In her testimony, the Plaintiff explained that with some other friends in the car, they were all returning from Katiolo nightclub at about 4.00 a.m. The First Defendant was driving at a fast speed despite several calls from all the passengers that he slows down. At a certain moment, the First Defendant had an argument with another driver and, thereafter, "was driving very fast and we told him to slow down because he was going too fast". The Plaintiff added that the First Defendant kept on driving very fast.

The vehicle, a mini-moke, hit against a rock on the left side of the road. All the passengers were thrown outside the vehicle except for the Plaintiff who was injured in the car, was in pain and vomiting blood. Soon after, the Plaintiff was brought to hospital.

Shirley Cecile gave evidence that she was a passenger in vehicle S 709 at the material time. She added:

we were going so fast, the rain was pouring down Moira and the other guys were screaming at the back and telling Norbert (the Plaintiff) to slow down but he thought that he was driving normal. It was raining, we were going in a corner and when he turned round and looked in front of him it was already too late and (we) hit with a rock and fly out...

No evidence was adduced on behalf of the Defendants. On the basis of the unchallenged testimony of the Plaintiff and her witness, I find liability to be established in favour of the Plaintiff.

According to the unchallenged medical report, exhibit P2 A, the Plaintiff was admitted into Victoria hospital on 31 May 1997. She was injured in the abdomen and the right shoulder and was vomiting blood. An examination of her abdomen revealed "extremely tender epigastrium. Guarded and rigid - upper and right half of abdomen..... Haemoperitoneum was clinically diagnosed..." The examination of her right shoulder

revealed "fracture of the right clavicle, right scapula and dislocation of the right shoulder..." The Plaintiff received surgical treatment on 1 June 1997 to repair a tear "in the lesser omentum closer to the right gastric border...". The Plaintiff's shoulder was immobilized in Plaster of Paris for five weeks although she was discharged on 9 June 1997. She continued physiotherapy treatment thereafter.

The Plaintiff was a girl of 17 years old at the material time and the surgical intervention has left a scar as revealed by exhibits P1, P2 and P3.

In *Simon Maillet v Louis* Cs 117 of 1990, the Plaintiff sustained a fracture of the left tibia and fibula. A sum of R30000 was awarded for pain and suffering, and a further sum of R10,000 for loss of amenities and enjoyment of life. In *Sinon v Kilindo* Cs 225 of 1992 the Plaintiff had a fracture of the right tibia and fibula. A global sum of R69,197.20 was awarded for pain and suffering and loss of amenities of life.

In *Petrina Esparon (a minor) v Paul Amesbury* Cs 157 of 1994, the Plaintiff suffered a fracture of the left femur and several lacerations to the cheek as a result of a road accident. The Court awarded R10,000 for the several scars to her face, R10,000 for the embarrassment and trauma suffered and R25,000 for the fracture of the leg.

Taking the above into account. I find it just and reasonable to award the Plaintiff a global sum of R35,000 as moral damages for pain and suffering and amenities of life and a sum of R7,000 for the unsightly scar resulting from the road accident. In the end result, I enter judgment in favour of the Plaintiff in the sum of R42,000 with interest and costs against the First Defendant.

The liability of the Second Defendant to satisfy the judgment only arises once judgment is entered against the First Defendant. The Second Defendant shall bear its own costs vide: *David Rose & Ors v Vivian Vidot & Ors* Cs 287 of 1997.

Record: Civil Side No 87 of 2002