

IN THE SUPREME COURT OF SEYCHELLES

PAUL CHUNG-FAYE

PLAINTIFF

VERSUS

RONALD EVANS PAYET

DEFENDANT

Civil Side No 288 of 2002

Mr. F. Ally for the Plaintiff
Mr. F. Bonte for the Defendant

JUDGMENT

B. Renaud

This is a claim for damages arising out of a collision of two motor vehicles.

It is not in dispute, that at all material time the Plaintiff was the owner and driver of motor vehicle reg. no. S.10837 and the Defendant was the owner and driver of motor vehicle reg. no. S.5895. On 16th January 2000 the two vehicles collided at La Misere, Mahe.

It is the averment of the Plaintiff, that the Defendant whilst in operation of his vehicle, was solely responsible for causing the collision when he was reversing his vehicle on the main road coming from a side road. Alternatively, the Plaintiff avers that the collision was caused by the fault and negligence of the Defendant. The Plaintiff further averred that as a result of the collision, he suffered pain, loss and damage in the sum of SR.71,115.00, which the Defendant is liable to make good. The particulars of his pain loss and damage are as follows:

1.	Shock	SR. 5,000.00
2.	Cost of spare parts, materials and labour	SR.28,115.00
3.	Loss of earnings (3 months x SR.6000.00)	SR.18,000.00
4.	Moral damage	<u>SR.20,000.00</u>
		<u>SR.71,115.00</u>

The Defendant contends that on the 16th January, 2000 at La Misere, Mahe, he was reversing his motor vehicle slowly from a private way to the main road. He reached the road and heard a car coming. He stopped his vehicle. The Plaintiff's vehicle collided on his vehicle. The

Defendant denies all the other averments and put the Plaintiff to strict proof. The Defendant further contended that he was prosecuted in the Magistrate's Court and was acquitted.

The acquittal of the Defendant in the Magistrate's Court of a criminal offence has no direct effect on this present case as the standard of proof required in a criminal case is "*beyond reasonable doubt*" whereas in a civil matter, it is on "*the balance of probabilities*".

The Plaintiff testified that he was a taxi driver at the material time driving up the La Misere road at 15 miles per hour, he saw a lorry driven by the Defendant, coming and the rear part of which hit against the right-hand side of his vehicle. Two doors of his vehicle were smashed and the windscreen was damaged. He had his vehicle repaired by one Philip. He was shocked and this has affected him to the point that he has no joy for driving anymore. He was able to drive his vehicle before the repairs were carried out. The repairs took 3 months to complete. As a taxi-driver he usually earns SR.6000.00 per month. He suffered loss as he could not operate his taxi during the period of repairs. The Plaintiff did not produce any medical report for the shock he suffered, neither any receipts for costs of spares parts, nor proof of his usual monthly earnings.

One Philip Victorin, a self-employed garage owner of Anse Boileau testified that he does mechanic, welding, panel beating and servicing jobs and he knows the Plaintiff who is a taxi driver and is one of his clients. On the day of the collision the Plaintiff brought his vehicle S.10837 to him for repairs. The vehicle had its right hand-side mudguard, rear door and rear panel smashed. Together with one Kevin Jean-Louis he inspected the vehicle and quoted SR28,000.00 as cost of spare parts required to repair the damages in addition to approximately SR.6000.00 for materials and SR.4000.00 as labour costs. The quotation was admitted as Exhibit P2(a) and P2(b). He carried out the repairs as per the quotation. All spare parts were new. Those parts removed were damaged completely and have been destroyed. The vehicle stayed in his garage for 3 months because he had to wait for the spare parts to be available. He bought the spare parts at one Nadessin's and he did not obtain any receipt for the door. Other spare parts were imported from Singapore, at his request by M1 Shop. Mr. Victorin could not produce any documentary proofs as he claimed that all papers relating to the operation of his garage have been thrown away.

The Defendant testified that on the material day he was reversing from a side road onto the main road when the Plaintiff coming in his car hit into his vehicle from behind and did not stop. The Police came on the scene. He does not accept the claim of the Defendant because the latter had enough time to stop his vehicle to prevent the collision. The Plaintiff did not apply his brakes when he saw his (*defendant's*) vehicle reversing. He had stopped his vehicle when he saw the Plaintiff coming but the Plaintiff did not stop but instead continued as a blind person and ripped his (*Plaintiff's*) vehicle from windscreen to rear, into the rear of his vehicle. Hence he

is not liable for the damages to the Plaintiff and indeed not SR.71,115.00 as claimed.

Both parties disclaimed liabilities for the collision. I have carefully analysed the evidence, including the sketch plan drawn up by the police. I find that on the material day the Plaintiff was driving uphill the La Misere road to a point where there is a bus stop. The Defendant was reversing his vehicle across the main road being used by the Plaintiff. The Plaintiff not suddenly expecting a vehicle to be across the main road could not avoid the said vehicle and the collision happened. In my view, it is not proper under any circumstances to reverse a vehicle on the main road unless proper warning is given to traffic along the main road for them to stop in order to allow the reversing vehicle onto the main road. There is no evidence that there was a turn boy on the reversing vehicle or any one on the main road to alert oncoming traffic of the danger of any reversing vehicle. For this reason, I find that the Defendant was at fault and was negligent. On the other hand, there is no evidence that the Plaintiff applied his brakes to stop his vehicle from smashing onto the reversing vehicle. I find that to a certain extent, he contributed to the collision. I assess this contribution at 30 % and any award made would be reduced by this factor.

There are no supporting documents as proofs of the costs of spare parts, materials and labour. However, it is common cause that the vehicle of the Plaintiff was damaged from windscreen to rear mudguard including two doors of the right-hand side of the Plaintiff's vehicle. The court would therefore make a reasonable assessment of the material damages. I would assess this to be not more than SR.12,000.00. Similarly, there is no proof of loss of earnings. However, I believe that the income earning activity of the Plaintiff is operating a taxi and whilst his vehicle was undergoing repairs he was deprived of this earning. There are no documentary proofs of the monthly earnings of the Plaintiff. In the circumstances I would award the Plaintiff a reasonable sum to cover his loss of net profit as a taxi operator which I assess as SR3,000.00 per month for 3 months. I make an award of SR.6000.00 as moral damage which also covers the resultant shock suffered by the Plaintiff. The total award is SR.27,000.00 and this is reduced by 30% for the contributory negligence of the Plaintiff.

I enter judgment in favour of the Plaintiff as against the Defendant in the sum of SR.18,000.00 plus interests and costs. Costs to be taxed on the scale of Magistrate's Court.

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B. RENAUD

JUDGE

Dated this 21st day of January 2005