

**Rose v Savy & Or
(2005) SLR 150**

Phillippe BOULLE for the Plaintiff
Danny LUCAS for the Defendant

Judgment delivered on 27 May 2005 by:

KARUNAKARAN J: This is an action in delict arising from motor vehicles namely, commercial pick-ups. The Plaintiff claims damages in the sum of R200,500 from the Defendants. This is based on the First Defendant's alleged negligent operation of a motor vehicle registration number S1765 owned by the Second Defendant, which collided with the motor vehicle of the Plaintiff registration number 59450 driven at the material time by the Plaintiff, Philippe Norcy Adrienne. The Defendant denies that any damage to the Plaintiff's vehicle was caused by the operation of the Defendants' vehicle and claims that the collision occurred solely due to negligent operation of the Plaintiff's vehicle at the material time.

The collision, out of which the action arose, occurred on 4 September 1998 at around 12.15 pm on the public road at Providence, Mahe. At the material time, Mr Philippe Norcy Adrienne (PW2), a truck driver by profession, was driving a 3.3 tonne motor vehicle registration number S1765 loaded with timber, traveling from the north to the south along the Providence main road. The First Defendant was driving his 1.5 ton pick-up registration number 59450 along the same road in the opposite direction traveling from the north heading towards Victoria. The collision occurred between their respective vehicles on a spot close to the roundabout opposite to CCCL in the vicinity of the Providence Industrial Estate.

According to Mr Adrienne (PW2), he was driving the pick-up registration number 59450 at a normal speed of 35 KM per hour on the seaside lane of the Providence main road. In fact, he was transporting timber from SMB depot at Hutau Lane in Victoria to Bougainville. The timber belonged to one of his client Mr Gilbert Sedgwick, a carpenter by profession who was also, traveling in the same pick-up at the material time, sitting at the front, on the passenger seat next to the driver Mr Adrienne. Another motor vehicle registration number 59450 driven by a third party was also traveling towards the south behind the Plaintiff's pick-up. According to Mr Adrienne, his pick-up after traversing a slight bend on the main road continued traveling towards the south along a straight stretch of road lying a few hundred feet before the said roundabout. The Defendant's pick-up was coming at a very high speed from the opposite direction, on the mountainside lane of the road. As there were some cars in front going towards Victoria, the First Defendant was trying to overtake them. In the process of such overtaking, the Defendant's pick-up crossed the midline and came onto the seaside lane of the road. The Defendants' pick-up thus, entered the wrong side of the road and collided with the Plaintiff's pick-up on its right side. The Plaintiffs pick-up having suffered a heavy impact on its right side, left the road,

collision between two motor vehicles. The Plaintiff claims damages in the sum of R200,500 from the Defendants. This is based on the First Defendant's alleged negligent operation of a motor vehicle registration number S1765 owned by the Second Defendant, which collided with the motor vehicle of the Plaintiff registration number 59450 driven at the material time, by one Mr Philippe Norcy Adrienne. The Defendant denies that any damage to the Plaintiff's vehicle was caused by the operation of the Defendants' vehicle and claims that the collision occurred solely due to negligent operation of the Plaintiff's vehicle at the material time.

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overtaken and was pushed with great momentum towards the until it halted hitting against some Takamaka trees situated a feet off the edge of the tarmac. As a result of the primary and Plaintiffs vehicle sustained extensive damage to its body Adrienne (PW2) and Mr Sedgwick (PW3) got trapped inside, and came out through the smashed windscreen. Both susta were taken to hospital for immediate medical treatment. T testimony of PW1 regarding the collision runs as follows:

I was going on my left hand side. The other transport w right hand side and came onto my lane and hit my pic the door to the back. I did not see then what happene which hit me. When the pick-up hit against me, I overt sideways. When the pick-up capsized the windscreen i we got out through the windscreen. After that the pick there were smock coming out and people who were sta telling us to get out of the pick-up, because it might c front; I could not see anything at the back of the pick-u smoke. After all that settled I saw the other pick-up (i. e which was coming behind) had gone (off the road) ar casuarinas trees. After everything had been cleared ou pick-up which hit us in the middle of the road smashe itself around from the direction that it was originally comi the mountainside... All in all, at the end of the day vehicles, which had been affected by the accident. .. vehicle had entered into and had taken half of my lane... my pick-up was badly damaged on the right. The cab was crooked and the petrol tank had been torn out and petrol was pouring out... The accident happened on the straight road...

xtreme of the road stance of about 15 ondry impacts the engine. Both, Mr l along the pick-up bodily injuries and levant part of the

ming on the starting from that pick-up I and ended ed and then was revving, there called fire. I ran in ause of the blue pick-up, against the uld see that I had turned d was facing were three Defendant's

Under cross-examination, Mr Adrienne also stated that he did not apply his brakes (at the material time) because the way (the First Defendant) was coming he would have caused a head-on collision. That was why he had to swerve to the nearest left to avert the collision by giving the Defendant way to pass.

PW3, Mr Gilbert Sedgwick, who was a passenger in the Plaintiffs pickup at the material time, obviously an eye witness to the accident testified corroborating the version of Mr Adrienne (PW2) in all material particulars as to how, why and under what circumstances the accident occurred. He further stated that he noticed the Defendant's vehicle at a distance of about 220 feet coming in front on a head-on-collision course. He immediately alerted his driver Mr Adrienne.

The Plaintiff, Mr Jeffrey Ross owner of the pick-up 59510 testified in essence that he purchased the said pick-up about a year prior to the accident for the price of R150, 000 from one Mr Moulinie of Vines Pty Ltd. After its purchase he spent R20, 000 on repairs that was carried out by a mechanic one Mr David Lobo (PW3). Moreover, the Plaintiff testified that as soon as he heard about the accident he rushed to the scene the same

afternoon and he saw his pick-up with extensive damages as was leaning against some Takamaka trees on the seaside distance away from the tarmac. The pick-up appeared to be had to engage the services of "Pelicser Breakdown Service" to up to the garage. The Plaintiff however, admitted that although off after the accident, its salvage value could be around R3 testified that he was using the pick-up in his business for com building materials and timber and was making a net profit of defraying the necessary expenses for it maintenance, fuel & testified as a result of the said accident and consequential beyond repairs, he suffered loss and damage including loss damage, in addition to the complete loss of his pick-up being a

lly at the front and at a considerable complete write off. He the damaged pick-up was a write off. The Plaintiff also al trips to transport 30 per month after he Plaintiff further tion of his pick-up evenue and moral off.

PW4, Mr Richard Maillet of the Vehicle Testing Station testified Plaintiffs vehicle after the accident and opined that it had sust beyond economic repairs vide exhibit P2 and hence was a con prior to the accident according to him, could not be more than R

it he inspected the extensive damage write off. Its value 300.

Mr David Lobo (PW3) testified that he carried out repairs to th the purchase and received the sum of R20,000 from the Plain According to his opinion, the value of the Plaintiffs pick-up prior around R175,000. From his observation of the scene o concluded that the collision occurred solely due to the ne Defendant's vehicle at the material time.

plaintiffs pick-up after wards his charges. e accident could be ident, the Plaintiff t operation of the

Moreover, the Plaintiff produced a photograph (exhibit P3) of t the accident and a receipt (exhibit P1) issued by "Pelicser Bre sum of R1,500 The Plaintiff also produced in evidence, a videoc containing video clippings recorded from the SBC news bulleti accident and the locations of the vehicles soon after the accide exhibit P6. The Plaintiff also testified that as a result of the collis his business and sustained financial loss. Moreover, the underwent shock, anxiety, distress and mental trauma because ... said accident and resultant loss of earning.

ick-up taken prior to vn Services" in the ette in VHS format owing the scene of his was marked as e could not operate iff stated that he

By reason of the matters aforesaid the Plaintiff testified that he suffered loss and damage as detailed below:

(a) Loss of Pick-up (written off)	R170,000.00
(b) Loss of Revenue for 6 months at R4000 per month and distress	R 24,000.00
(c) Towing of Pick-up	R 1,500.00
(d) Moral damages	<u>R 5,000.00</u>
Total	<u>R200,500.00</u>

In the circumstances, the Plaintiff claims that the Defendant is liable to compensate him for the said loss and damage and hence, prays the Court for a judgment in the sum of

R200,500 with costs against the Defendant.

On the defence side, it is not in dispute that pick-up S1765 belonged to the Second Defendant Mr Louis Savy (DW2), who is none else than the father of the First Defendant, who was driving that pick-up at the material time. The First Defendant in his testimony denied the entire version of Mr Adrienne (PW2) as to how and under what circumstances, the collision occurred between the two vehicles. According to the First Defendant, he was driving his pick-up at the material time of the accident at a normal speed, on his lane that is, the mountain side lane of the road and was traversing a slight bend. He testified that did not overtake any car or vehicle at the material time. He never entered into the other lane of the road at any point of time. According to the Eleventh Defendant, it was the Plaintiffs pick-up, which came onto wrong lane and collided with his pick-up causing extensive damage to the vehicle. One Mr Richard Savy (DW3), a brother of the First Defendant testified that he was a passenger in the Defendant's pick-up sitting at the front next to the driver seat. But, he did not see the First Defendant overtaking any transport at the material time. However, under cross-examination he became stoic and did not even deny the suggestion that he was hiding the truth and fabricated the facts to save his brother in this case. One Mr Frederick Savy (DW4), the auditor cum accountant of "Vines Pty Ltd" testified that the company was the previous owner of pick-up 59450, which was sold to the Plaintiff in 1997 for R100,000

In view of all the above, the Defendant contends that it was the Plaintiff's fault that caused the collision. Therefore, the Defendant denies liability alleging that the Plaintiffs negligent operation of his truck was the sole cause for the collision and resultant damages he allegedly suffered. In the circumstances, the Defendant seeks the Court to dismiss this action with costs.

Before I proceed to examine the evidence, I should mention here that since the Second Defendant died *pendente lite*, the Plaintiff has already withdrawn the case against him. Be that as it may. I carefully perused the entire evidence including the documents adduced by the parties in this matter. The Court also had the opportunity to inspect the locus in quo as well as to watch the video clips produced in evidence. Firstly, with regard to law involving the operation of motor vehicles, I note, Article 1383(2) of the Civil Code of Seychelles reads as follows:

The driver of a motor vehicle, which by reason of its operation, causes damage to persons or property shall be presumed to be at fault and shall accordingly be liable unless he can prove that the damage was solely caused due to the negligence of the injured party or the act of a third party or an act of God external to the operation or functioning of the vehicle. Vehicle defects, or the breaking or failure of its parts, shall not be considered as cases of an act of God.

This has been interpreted by the Supreme Court of Seychelles in *Sandra Vet v Oswald Tirant & or* CS 128 of 1977 to mean that when a pedestrian is involved in an accident with a motor vehicle, the driver of the motor vehicle is liable for any damage caused to the pedestrian unless the driver of the vehicle can prove that the accident was caused

solely by the negligence of the pedestrian or the act of a third party or an act of God. However, in *A Camille & another v Sewood Ltd & another* CS 204 of 1983, when a motor vehicle was involved in an accident with another motor vehicle, it was held that there is no presumption that may be called to the aid of the injured party. Each driver is liable to the injured other party unless he can prove that the accident occurred solely through the negligence of the other party or the act of a third party or the act of God. In the present case it is a question of two drivers each of whom suffered damage to his vehicle, the presumption of law under Article 1382(2) arises against both drivers. Can it be said that either the Plaintiff or the Defendant has proved that the accident occurred solely through the negligence of the other injured party?

I diligently analysed the entire evidence on record. Firstly, on the question credibility I believe the Plaintiff and his witnesses in every aspects of their testimony. They all appeared to be truthful witnesses. Especially, I believe PW2 and PW3, in their version as to how, why and under what circumstances the accident occurred. Their evidence is very cogent, reliable and consistent. Above all, their version is corroborated in all material facts by other independent evidence available on record. In fact, the observation made by the Court in locus in quo, the video clips filmed soon after the collision and the location and concentration of debris on the seaside lane of the road all corroborates the Plaintiffs side version in that the First Defendant's negligent operation of his vehicle S1765 was the sole cause for the collision. The testimony of the independent eye-witness Mr Gilbert Sedgwick, DW3 also corroborates the version of Mr Adrienne (PW2) in this respect. After taking the entire circumstances into account, I am of the view that the First Defendant drove his pick-up at a high speed and overtook the cars in front along the space available on the right lane of his road. Before overtaking those cars he failed to ensure that the other lane was clear of oncoming traffic and safe for his use. To my mind, he has ventured a high risk as an imprudent driver and has blindly overtaken the cars, when he could not have had a clear view of the oncoming traffic from the opposite direction and so I find. I do not believe the First Defendant and his brother (DW3) in their testimony that the Plaintiff's pick-up was on the wrong lane of the road at the material time and caused the accident.

Having considered the entire evidence in this case, I am satisfied more than on a preponderance of probabilities that the fault of the First Defendant was the sole cause of the collision in that, he failed to take necessary precaution to ensure that the road ahead of him was safe, before he attempted to overtake the cars and so I find. Having regard to all the circumstances of the case, in my judgment, the First Defendant has failed to act as a prudent driver in the entire episode. I completely reject the version of the First Defendant alleging negligence on the part of the other driver Mr Adrienne, as I do not attach any credibility to his testimony. Hence, I find that the First Defendant is liable to make good the Plaintiff for the actual loss and damages the later suffered as a result of the accident.

As regards the value of the Plaintiff's pick-up I believe Mr Frederick Savy (DW4), the auditor cum accountant of "Vines Pty Ltd", in his evidence that the previous owner sold the pick-up 59450 to the Plaintiff in 1997 for R100,000 Therefore, I find that the actual value of the said pick-up prior to the accident was at R120,000 including the costs of

repairs effected to the vehicle by the Plaintiff after the purchase. At the same time, the Plaintiff admitted in his evidence that the salvage value of the pick-up subsequent to the accident would be around R35,000 In the end, the Plaintiff has suffered a net loss of only R85,000 in respect of the pick-up.

Accordingly, I award the following sums to the Plaintiff:

1	Loss of Pick-up (written off)	R85,000.00
2	Loss of Revenue for 6 months At R4,000 per month and distress	R24,000.00
3	Towing of Pick-up	R 1,500.00
4	Moral damages	<u>R 5,000.00</u>
		<u>R115,500.00</u>

Wherefore, I enter judgment for the Plaintiff and against the First Defendant Mr Terence Savy in the sum of **R115,500.00** with costs.

Record: Civil Side No 443 of 1999