

# **IN THE SUPREME COURT OF SEYCHELLES**

MAC DENISE DUFRENE

**PLAINTIFF**

VERSUS

PATRICK BACCO

**DEFENDANT**

Civil Side No 109 of

2003

Mr. F. Elizabeth for the Plaintiff

Mr. S. Rouillon for the Defendant

## **JUDGMENT**

**Perera J**

This is a delictual action in which the plaintiff claims damages for personal injuries suffered by her allegedly by an attack made by the defendant with a knife.

The plaintiff and the defendant had been living in concubinage for about 12 years prior to the date of the alleged incident, which occurred on 18<sup>th</sup> June 2001. That day the plaintiff, her daughter Shriffa, and her sister Ronia came to watch the National Day Parade at Stade Linite. All of them lived at St Louis. The plaintiff stated that the defendant dropped them at the Stadium and went away in his car. After the parade was over, the plaintiff decided to visit her sister living at Roche Caiman. On the way she saw the defendant's car parked outside the house of Marie-May Horarce with whom the defendant was having a relationship. The

plaintiff called the defendant three times to come out of the house, but he did not do so. He shouted at her in obscene language. Then he came out lifting a big knife and attacked her. She raised her right hand to shield the blow and in the process the palm was severely injured. The plaintiff denied a suggestion made by the defence that her hand was injured when she fell during a struggle with the defendant and cut her hand over sharp edges of flower pot or broken glass at that place.

Sharifa Defrene, daughter of the plaintiff was an eye witness to the incident. She saw the plaintiff near the defendant's car at the premises of Marie-May Horace, and the defendant swearing at her from the first floor of the house. Then suddenly, the defendant came out brandishing a big knife. First he hit the wall and then came near the plaintiff and raised her right hand to shield herself and was cut. The defendant then went back to the house. She denied that the injury was caused by any flower pot or broken glass, as suggested. She herself was slightly injured on the forehead when the defendant raised the knife to attack the plaintiff.

The defendant admitted that she was visiting Marie-May Horace that night when the plaintiff came there and banged the door asking him to come out. From the first floor of the house, he saw the plaintiff with four others shouting and banging on his car. He then came out and moved towards the house of a neighbour and in the process fell over some flower pots. When he got up, the plaintiff and the others had left. He denied that he ever handled a knife during the incident; or that he brought the plaintiff earlier in the day to the stadium.

Marie-May Horace corroborated the evidence of the defendant. She however stated that she did not see whether the defendant went out of the house with any object in hand, as she remained upstairs. She denied that she had a

smaller knife, to cut fish. She however stated that the defendant brought a panga knife when he came to live with her subsequent to the incident.

According to the medical report (P1) the plaintiff had the following injuries-

1. Deep laceration palmar aspect of right hand
2. Incomplete fracture head of 2<sup>nd</sup> metacarpal bone extending to proximal phalangx of right index finger
3. Dislocation of interphalangeal joint of 4<sup>th</sup> toe.

The deep laceration was 10 x 3 x 2 cm. There was damage to the "*flexor digitorum tendons of the right index and long fingers*".

The plaintiff was taken for emergency operation for wound debridement, repair of tendons and reduction of interphalangeal joint dislocation. She was warded in hospital for 12 days.

She followed S.O.P.D. follow up treatment for post traumatic conjuncture of right hand. She also had to follow physiotherapy sessions. On 22<sup>nd</sup> January 2002, the Surgeon certified that she was having almost 100% full range of movements and normal hand function.

The palm of the right hand was seen by Court, and the respective Counsel at the hearing of the case. The 10 cm long laceration is clearly visible with the permanent scars left by the Surgical procedure. Dr. Kumar Gupta, in his testimony stated that the laceration was 2 cm deep, and that it should have been caused by a

sharp object.

On a consideration of the medical evidence and the nature of the injury on the right hand palm of the plaintiff, the Court is satisfied on a balance of probabilities that a 10 cm long, 3 cm wide and 2 cm deep laceration was caused by a sharp long knife used with force. Such injury could not have been caused by the sharp edge of a flower pot, in which case the laceration would have been partly circular, and not straight, and also could not have been caused by broken bottles, in which case, the injury would have been jagged and irregular in nature.

As regards the evidence in the case, the Court is satisfied that the defendant used a long knife with the intention of causing actual bodily harm to the plaintiff. The Court does not believe his evidence that he did not carry any knife when he came out of the house and that he did not cause any injury to the plaintiff. What is relevant for the delictual action is “*an act or omission, the dominant purpose of which is to cause harm to another*” (Article 1382 (3) of the Civil Code). The shielding of a blow is a natural reflex action. The depth of the laceration is indicative of the force used. Hence the defendant is liable in damages.

### **Damages**

The plaintiff testified that she cannot still close her right fist properly and that she cannot lift heavy objects. She suffered extreme pain and loss of blood consequent to the injury. The palm of her right hand is disfigured by a linear scar 10 cm long. The medical report states that she now has “*almost*” 100% full range movements and normal hand function. Such flexibility is therefore “*almost*” 100% but not 100%. Hence, the plaintiff has even a small percentage of permanent incapacity.

In the case of **Danny Bastienne v. Aquatic Sports Ltd (C.S. 196/91)**. The plaintiff suffered a rugged laceration around the distal edge of the leg which had to be sutured and debridged. He had a limitation of movements of the right big toe due to a permanent injury to a nerve. This Court awarded a global sum of Rs.20,000 for pain and suffering, disfigurement and permanent disability.

In **Gonsalves Beaudoin v/s Joseph Estro (C.S. 165 of 1986)** the plaintiff was assaulted by the four defendants in the case with iron rods. Injury was caused to the right eye and the cheek bones. Subsequent to surgical operations, the bones were set, but his vision was impaired. He was awarded Rs.20,000 as moral damages.

In **Brigitte Servina v. Rita Jupiter (S.C.A. No. 18/94)** the Court of Appeal approved an award of Rs10,000 made in a case which involved an assault on the plaintiff, she suffered abrasions to the head, cheek and lips and bruises on the calf.

In the present case, the plaintiff claims Rs.50,000 for pain, suffering, trauma and mental anguish and Rs.10,000 for the permanent scar and cosmetic injuries.

On a consideration of the awards in the above cases, and also the facts and circumstances of the present case, I make the following awards.

1. *Rs.20,000 for pain and suffering, trauma and mental anguish.*  
*Rs.8,000 for the permanent scar.*  
*Rs.200 for the medical report.*

Judgment is accordingly entered in favour of the plaintiff in a sum of Rs.28,200 together with interest and costs.

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A.R. PERERA

**JUDGE**

Dated this 15<sup>th</sup> day of May 2006