

IN THE SUPREME COURT OF SEYCHELLES

ALEX JOUBERT

PLAINTIFF

VERSUS

ATTORNEY GENERAL

Rep. by the Government of Seychelles

DEFENDANT

Civil Side No 48 of
2002

Mr. B. Georges for the Plaintiff

Mr. J. Camille for the Defendant

JUDGMENT

Perera J

This is an delictual action in which the plaintiff claims damages in respect of injuries caused to his thigh by a bullet fired by a member of the Task Force of the Seychelles Police Service. It is averred that he was shot on 3rd September 2001 by that Officer while acting in the course of employment with the government. The claim is made against the government in its vicarious capacity. The defendant averred that members of the Task Force were on duty at Belvedere that day to disperse an unlawful assembly which was causing, or was likely to cause a breach of peace in that area.

However, the defendant conceded liability, and hence there remains the determination of the quantum of damages.

The plaintiff testified that on 3rd September 2001 at about 8 p.m, he and some other supporters of the Seychelles National Party, were near the house of one Nella Samson at Belvedere, awaiting the result of the

Presidential Election. There was music and a party at that house, and he and his friends were also consuming alcoholic drinks. Then two jeeps with Policemen arrived there and started to shoot without any warning. Everyone ran away. While he was running he received a bullet on his thigh. He fell, but did not feel any pain as he was "a bit drunk". It was one of his friends who told him that he was shot. He walked to Nella Hoareau's verandah, and from there he ran to his sister's house from where he was taken to hospital.

The medical report dated 15th October 2001 (D1) issued by Dr. P. Commettant shows that there was a "small puncture wound noted at right thigh". There was no fracture or foreign body seen. The plaintiff however claimed that the bullet entered the right thigh and came out through his right buttock. The two photographs produced by him, show a wound on the right thigh and on the buttock. Be that as it may, the plaintiff stated that he was warded in hospital for 5 days, and was convalescing at home for about four months. He attended the clinic for dressings. He complained that he suffered pain and has to use some "rubbing lotion" daily.

The plaintiff stated that he was a fisherman and sometimes worked as a casual labourer, and earned around Rs. 3000 per month. Sometimes he received about Rs4000 per month depending on the tonnage of fish caught in a fishing trip in the Spanish vessel he worked.

In paragraph 6 of the plaint, the plaintiff avers that he was unable to work for two months and estimates that he lost earnings in a sum of Rs.8000. He further claims Rs. 50,000 in respect of pain and suffering.

In the case of Suzette Hermitte v. Philip Dacabra (C.S. 261 of 1998), a bullet fired by a Police Officer who was faced with a hostile mob during election time, ricocheted off the tarmac and entered the thigh of the plaintiff. There was only a inlet wound, as the pellets got embedded in the flesh. According to medical opinion, it was dangerous to remove those pellets from the position where they were.

Consequently, she had a 15% incapacity in the left leg. I awarded Rs.60,000 for pain and suffering and a further Rs.15,000 for loss amenities of life.

The Court of Appeal upheld those awards and awarded a further Rs.50,000 for loss of earnings.

In *Kirk Telemague v. Jean Vardin (C.S. 332 of 1999)*, a National Guard shot a man fleeing from arrest. It was later discovered that he was a mental patient. The shot entered his left femur. The x'ray reports showed bone splinters in the soft tissues, with an apparent fracture in the lower end of the femur. Later he had a complete recovery.

On a comparison of the injuries in the case of *Suzette Hermitte (supra)*, I awarded a sum of Rs.45,000 for pain and suffering.

In the case of *Allen Sauzier v. Gerris Figaro & Ors (C.S. 329 of 2003)*, the plaintiff received a gun shot while walking on the street. He suffered a single entry wound 2 x 3 cms, which ruptured his spleen, caused two holes in the diaphragm and also caused a laceration of the left lung. He made a complete recovery in 7 days. I awarded a sum of Rs.50,000 for pain and suffering.

In the present case, there were no major injuries as in the above cited cases. There was a clean entry and exist wound. There was no fracture nor serious damage to tissues. He had a complete recovery after 5 days of hospitalization. However, it is reasonable to accept that he suffered some temporary incapacity, particularly when sitting, for a period of about two months. On a comparison of the injuries in the above cited cases, I award a sum of Rs.30,000 for pain, suffering, anxiety and inconvenience.

As regards loss of earnings, the evidence is that the plaintiff did not receive a fixed salary, but earned around

Rs.1800 per month. The receipt of further amounts for overtime work during the weekend, and tonnage, were uncertain. Hence, taking Rs.1800 as average earnings per month I award Rs.3600 for the two months claimed.

Judgment is accordingly entered in favour of the plaintiff in a sum of Rs.33,600, together with interest and costs.

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A. R. PERERA

JUDGE

Dated this 29th day of September 2006