

# IN THE SUPREME COURT OF SEYCHELLES

JEANINE BONNE & OTHERS

PLAINTIFF

VERSUS

JIM NAPOLEON

DEFENDANT

Civil Side No 221 of 2001

Mr. F. Bonte for the Plaintiffs

Mr. A. Juliette for the Defendant

## JUDGMENT

Perera J

This action under Article 1383(2) of the Civil Code, has been brought by the parents, brothers and sisters of a 19 year old boy, who died on 11<sup>th</sup> April 1999 consequent to an accident involving motor vehicle bearing no. S. 12048 driven by the defendant. The defendant, in his statement of defence avers that he accidentally knocked down the deceased who was lying on the Public road, either drunk or had been hit by a previous vehicle. Seeking to rebut the presumption in Article 1383(2), he avers that the accident was caused solely due to the negligence of the deceased, or alternatively, that the deceased contributed to the accident.

However at the hearing, Learned Counsel for the defendant admitted liability, and hence the determination of this Court is limited to the computation of the damages.

The 1<sup>st</sup> plaintiff, the mother of the deceased, testified on her own behalf and on behalf of the other members of the family. She produced a copy of the judgment of the Magistrates' Court in case No. T. 173/99, wherein, after trial, the defendant was found guilty for the offence of negligent driving and a fine of Rs.4000 imposed on him.

The claims of the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs, the father and mother are based on moral damages for grief, loss of child and loss of financial assistance. The claims of the five brothers and sisters are based on moral damages for grief and distress for loss of a brother. As regards the claim of the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs for loss of financial assistance, there is no evidence as to whether the deceased was employed, and if so, he assisted them financially. However the sudden death of a son in tragic circumstances would undoubtedly have caused immense grief and pain of mind to the parents. The mother claims Rs200,000 while the father claims Rs.90,000. The Court however considers that the loss and grief to both of them were uniform. The claims are in any case excessive. In the case ***Pon Waye & Ors v. Chetty (1971) S.L.R. 209 at 215, Souyave CJ*** stated that one of the main principles the Court should bear in mind in a claim for moral damages by members of a family in respect of an accidental death of another member, is

that it should not be made “an occasion of coining profit out of affliction and turning family bereavement into pecuniary advantage”. Bearing that in mind, I award a global sum of Rs.50,000 to be shared by both the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs, the mother and father, who are a married couple.

As regards the claim of the brothers and sisters of the de cuius (3<sup>rd</sup> to 7<sup>th</sup> plaintiffs), I award a sum of Rs.5000 each, totaling a sum of Rs.25,000.

Judgment is accordingly entered in favour of the plaintiffs in a total sum of Rs.75,000 together with interest and costs.

A.R. PERERA

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**JUDGE**

Dated this 26<sup>th</sup> day of January 2006