

**IN THE SUPREME COURT OF SEYCHELLES**

- 1. MARIE LISE BERGHOF
- 2. COLLIN CHARLES

**PLAINTIFFS**

**VERSUS**

- 1. AIR SEYCHELLES LIMITED  
(herein rep by its Executive Chairman  
Capt. David Savy

2. SIMON

ALBERT

**DEFENDANTS**

Civil Side No

239 of 2003

Mr. F. Bonte for the Plaintiff

Mr. K. Shah for the Defendant

**JUDGMENT**

**Gaswaga, J**

The Court has been invited to assess the disputed quantum of moral damages the defendant having admitted:

- i. *liability for the accident*
- ii. *the claim of (a) Sr. 7,850 for cost of repairs and spare parts*  
*(b) Sr.12,222.81 c. or (Euro 2027) for spare parts from*  
*Germany*

It has been submitted by Mr. Shah for the defendant first of all, that no body was hurt in this accident and that the only damage was to the first defendant's vehicle. Secondly, he concedes that in any accident in which a person's vehicle is damaged, inconvenience is caused but also warns that this should not be taken as an occasion to coin profit. For these reasons Mr Shah considers the moral damages of Sr. 25,000/- as being grossly exaggerated and well in excess of the actual cost of repairs and further that same should be paid to the owner of the vehicle, the first plaintiff and not the driver, second plaintiff.

It was strongly observed by the Court in the case of **Fulugensio Samako Vs Edirisa SSebgwawo (1979) HCB. 15.** that in an action for damages one of the duties of Counsel should be to put before the Court material that would enable it to arrive at a reasonable figure by way of damages. In this respect Counsel owes a duty to their client as well as to Court to help in arriving at a reasonable award.

Mr. Bonte for the plaintiff, in justifying a moral damages of Sr. 25,000 averred that his client suffered a lot of stress while looking for and purchasing the spare parts which were not readily available in the country. That is why she purchased some of the spare parts from Germany. Even this purchase from overseas involved paying in foreign currency which she had to borrow from a friend who is now after her for taking long to refund the 2027 Euro. Further that the first plaintiff has suffered as a result of not using her car for a very long time. She lives on Praslin Island and has had to travel several times to Mahe, between the year 2003 when the case was first instituted in Court and now, not only to consult with the lawyer but also to attend Court whenever the case came up although it was not necessary for her to attend at all times especially after testifying and instructing Counsel.

It is true all this is stressful and a lot of time and other resources have been engaged to the process of pursuing this claim but does it merit an award of Sr.25,000? For how long did the plaintiff have to do without her car? Could it be that by the time this plaint was filed on the 28/7/2003 the plaintiff had already purchased spare parts and repaired her car (See *paragraph 4 thereof*) and therefore ceased experiencing transport problems? The accident occurred on 21/12/2002. These are just some of the crucial and pertinent questions which were not addressed by both Counsel who most especially concentrated on having the Court to determine the final figure may be through other channels.

It should be noted that unlike specific damages, which refer to that precise amount of loss that the plaintiff can prove to have followed from the particular facts set out in his pleadings for moral damages, although should also be pleaded and proved, the plaintiff is unable to quantify exactly any particular items in it; for example stress and suffering. See: ***Aerial Advertising Co. Vs. Bachelor's Plea Ltd (1938) 2 ALL ER P. 788.*** The Court will therefore estimate a reasonable sum of money basing on among other things the circumstances of the case, earlier awards made in similar or related claims and the extent to which the pleadings justify or substantiate the claimed quantum of damages.

To support his submission and also guide the Court Mr. Shah cited three authorities of accident claims. In ***Danny Loizeau Vs. David Marie Civil Side No 391 of 1997*** the Court took the view that the plaintiff appeared to be someone who is perfectly capable of handling difficult situations and has a strong morale before awarding a nominal sum of Sr.500 of the Sr.10.000 claimed. Considering the

inconvenience and anxiety caused to the plaintiff in **Marcel Zabe Vs Edward Thelermont & Eden Car Hire Civil Side No. 371 of 1995** the plaintiff was awarded Sr.5000 as moral damages. Similarly, Sr.3000 representing moral damages was awarded in the case of **Berard Vidot Vs Frank Brioche and State Assurance Corporation Civil Side No. 278 of 1998** when the Court took into account the length of time the plaintiff's vehicle had been immobilized and the circumstances of the case.

I noted however that all these decisions and therefore the awards were made about ten years ago. It is true that today's World is developing at a faster pace than before especially in the economic/financial Sector which has evolved several folds in the last decade thereby affecting not only the value of money and prices of goods and services but also the Court awards. The plaintiff has been vigilant in pursuing this case, attending each session religiously and at times crying before the Court with frustration when the matter is postponed to another date. Considering the inconvenience and stress caused to the plaintiff and other reasons indicated herein above I feel a sum of Sr.10,000 as moral damages should be paid to her by the defendants jointly and severally. Judgment for plaintiff is accordingly entered in these terms.

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D. GASWAGA

**JUDGE**

Dated this 22<sup>nd</sup> day of March 2006