

IN THE SUPREME COURT OF SEYCHELLES

CHRISTOPHER SERVINA **PLAINTIFF**

VERSUS

YACINTHA UNA RICHMOND **DEFENDANT**

Civil Side No 342 of 2004

Mrs Antao for the plaintiff

JUDGMENT

Gaswaga J

In this case the plaintiff is claiming damages for personal injuries sustained on his right arm and allegedly occasioned by the defendant, Una Richmond. On the 31/5/2005 a defence containing a denial of the said assault by the defendant was filed in Court. However, on the 19/5/2006 – the date set for the hearing of the case by and in the presence of both parties and their Counsel, neither the defendant nor her Counsel turned up. Pursuant to **S. 65 of the Seychelles Code of Civil Procedure Cap 239** leave was granted to the plaintiff to proceed with his case *ex parte*.

The plaintiff is an amateur Sportsman residing at Ma Joie while the defendant is and was at the material time his neighbour. According to the plaintiff, on the 18th day of April 2004 between 8.00 p.m and 8.30 p.m while returning from the Local Government playground where he had been participating in Sports, the defendant struck him on the right arm with a piece of wood and then ran away. The plaintiff turned back and saw and recognised his assailant as the defendant, a girl he had not only seen before but also knew well as a daughter of their neighbour. He called out for her but she ran into her place. The plaintiff, who was at the time standing by the roadside continued calling out for the defendant but she did not respond instead her mother came out of the house and started swearing at him.

As a result of the hitting the plaintiff sustained a broken right arm. He went to Victoria Hospital and subsequently reported the matter to Police. Dr. Lester Montoro, an Orthopedic Surgeon on the 18/4/2004 examined the plaintiff who was at the time complaining of pain and tenderness in the right hand. The physical examination revealed that there was abrasion dorsal aspect in the right hand and pain, tenderness and slight swelling in the 5th finger. X-ray was done and showed fracture at 5th metacarpal and proximal phalanx of the right hand. The medical

report (P1) prepared by the said Doctor recommended dressing with betrolius and Plaster of Paris (POP) to be applied. A photograph showing a person's right arm in a Plaster of Paris (POP) was left on the record as an item. The patient was followed up in SOPD on 21st April 2004 for open window and dressing with further advice for antibiotics and NSAIDS to be given. When the Plaster of Paris (POP) was removed on the 19th May 2004 the doctor advised Physiotherapy.

The defendant's version is that on the said day time and place she was in her house when she heard someone insulting her from the road which is above her house. That when she came out of the house she saw the plaintiff at the road and that she did answer back but that at no time did she get close to or touch or strike or otherwise harm the plaintiff. It is further stated in the defence that during the loud exchange between the parties the defendant's baby woke up, started crying and the defendant went inside to attend to him leaving the plaintiff outside and still swearing.

On the unconverted evidence of the plaintiff, the Court is satisfied that the plaintiff sustained injuries described herein above when he was hit on his right arm at the time and place already stated and further, that it was the defendant, well known and recognised by him that struck the plaintiff with a piece of wood. He even called out her name without consulting any body as she was fleeing the scene and before she gained entry into her mother's house. The defendant's version of the events that unfolded that evening is disbelieved by the Court. Although there were no eye witnesses to the attack the Court is again satisfied that the plaintiff has proved his case on a balance of probabilities as alleged in the plaint **See Re Wrightson (1908) Chancery 799.**

In a delictual case, what has to be established is that the injury or harm or damage was caused by the act of the defendant **See Art. 1382 of the Civil Code.** Moreover, the defendant's act which caused harm was intentional, the more reason he should be held liable in damages.

Damages are being sought by the plaintiff under the following heads;

(a)	Pain and suffering	-	Rs 15,000
(b)	Loss of earnings	-	Rs 5,000
(c)	Loss of amenities	-	Rs 17,000
(d)	Moral damages	-	Rs 5,000
(e)	Medical certificates	-	<u>Rs 200</u>
		Total	<u>Rs 42,200</u>

It was held by Lord Moris in **West Vs. Shephard 194 x App. Cases 326** that

“money cannot renew a physical frame that has been battered or shattered. All

that Judges and Courts can do is to award sums which must be regarded as giving reasonable compensation.....”

The guiding principle was stated in the case of **Mousbe & Or V. Elizabeth S.C.A. No. 14 of 1993** that the assessment of damages was an estimate which was necessarily a matter of degree and that such assessment was more like an exercise of discretion than an ordinary Act of decision, and that therefore, any figure that was arrived at during the assessment of damages could not be other than artificial and must basically be a conventional figure derived from experience or from comparable awards.

The Court awarded a global sum of Rs.20,000 for pain and suffering, disfigurement and permanent disability in the case of **Danny Bastienne V. Acquatic Sports Ltd C.S. 196/91** wherein the plaintiff suffered a rugged laceration around the distal edge of the leg which had to be sutured and debridged. He also had a limitation of movement of the right big toe due to a permanent injury to a nerve. A sum of Sr.10,000 was approved by the Court of Appeal in **Brigitte Servina Vs Rita Jupiter S.C.A. No. 18 of 1984** for the injuries suffered by the plaintiff. She had sustained abrasions to the head, cheek and lips and bruises on the calf. In the case of **Christopher Fred Vs. Ag C.S. 154 of 2003**, which involved an assault by a Police Officer, the plaintiff received severe injuries. He had hemorrhage of the left eye with diminished vision, perforation of his ear drum, with reduced hearing and contusion of the left foot. Sr. 40,000 was awarded for pain and suffering. In another assault case by a Police Officer **Bernard Laporte V. The Government of Seychelles C.S No. 231 of 2003**, the first plaintiff who suffered a slight injury on his eye as a result of a slap was awarded Sr. 8000 for pain and suffering and Sr. 2000 as moral damages for humiliation, stress and distress.

There is no doubt in the instant case that the plaintiff suffered pain and inconvenience. He carried a Plaster of Paris (POP) on his right arm for about a month. For reasons already stated and the comparable awards cited, a sum of Sr. 10,000 in respect of the first head of pain and suffering and that of moral damages is awarded.

According to the uncontroverted evidence of the plaintiff, he was employed by the Continental Stores at the material time and earning a salary of Sr. 2500 per month. However, it is clear to the Court that he was granted sick leave (See. P3) for only one month starting on the 18/5/2004. Even if he had a job, in that condition he could not have been able to work. Further, the Court viewed the plaintiffs fingers and observed that the fifth metacarpal and proximal phalanx of the right hand was deformed and did not look normal like the one on the left hand. Moreover, the plaintiff continues to feel pain in the whole hand when he exerts force on it and for this reason can no longer participate in sports yet he is only 28 years old.

In these circumstances, I shall award Sr. 2500 for loss of earnings, Sr.6000 for loss of amenities and Sr. 200 for the medical report.

On the whole, judgment is entered in favour of the plaintiff in the sum of Sr. 18,700 with interest and costs.

.....

D.GASWAGA

JUDGE

Dated this 3rd day of July 2006