IN THE SUPREME COURT OF SEYCHELLES

1. MS BARBARA ROSETTE
(herein Rep by her mother Mrs Lorna Volcy)
2. MRS LORNA VOLCY **PLAINTIFFS**

VERSUS

1. MR JULES VERLAQUE
2. SEYCHELLES PETROLEUM CO LTD
(herein Rep by its Director Mr Kevin Bresson) **DEFENDANTS**

Civil Side No 279 of 2002

Mr. P.Boulle for the Plaintiffs
Mr. F. Ally for the Defendants

JUDGMENT

Perera J

This is a delictual action filed under Article 1383(2) of the Civil Code. The 1st plaintiff, a minor at the time of the accident represented by her mother the 2nd plaintiff, sues the first defendant, the tortfeasor, and the 2nd defendant, his employer in a vicarious capacity, in respect of injuries caused to her in a road traffic accident which occurred on 6th November 1998 at Anse Aux Pins. The 2nd plaintiff also claims moral damages and medical expenses incurred. The defendants aver that the accident was caused solely due to the negligence of the 1st plaintiff, or alternatively that the 1st plaintiff contributed to the accident.

The 1st plaintiff testified that she went to a shop on the seaside of the road with two other friends who were studying with her at the Anse Aux Pins School.

They walked along the pavement on the mountain side of the road, and crossed to the other side where the shop was. According to the evidence of the 1st plaintiff, when she and her friends were returning from the shop to cross the road, there was a bus travelling towards Anse Royale. After that bus had passed, all of them crossed the road. She stated that she saw the 1st defendant's vehicle coming slowly along the seaside of the road. The two friends crossed safety, but when she had herself reached the pavement, and was facing the school, the vehicle ran over her right foot and consequently she fell. According to the medical reports, she sustained a fracture of the tibia and fibula of the *right leg*, fracture of the nasal bone and laceration of the lower lip and fracture of the upper dental area which had to be supported with wire and splint.

The 1st defendant, in his testimony stated that he had stopped his vehicle opposite a shop close to the bridge where the accident occurred, and was still on first gear when he heard a loud noise. He did not know what hit the vehicle. He did not see the 1st plaintiff at all on the road. After he alighted from the vehicle, he saw the 1st plaintiff fallen down. He noticed that his left side mirror was broken and pushed back. There was also a slight dent on the left side of the vehicle. He maintained that he was concentrating on the road, and that he did not see the 1st plaintiff before the impact.

Maureen Andrade testified that she get off a bus which came from Victoria when it turned and stopped opposite the Police Station on the mountain side of the road. She was going towards a shop on the same side when she saw at a distance of about 40 feet, a child being hit by a vehicle and being thrown off about 2 feet from the edge of the road.

Mireille Barbe, was also a passenger in the same bus in which Maureen Andrade traveled. When she get down, she saw a girl lying fallen on the edge of the road with people around her. She was trying to drag herself towards the pavement.

Liability

According to the evidence of Maureen Andrade and Mireile Barbe, the 1st plaintiff lay fallen near the edge of he road. A visit of the *locus in quo* disclosed that the pavement at the spot where the 1st plaintiff was knocked down was in level with the main public road, as it is the entrance to a lane. The fact that the 1st plaintiff received injuries on her right leg corroborates her version that she had already crossed the road and was walking towards the school. If the 1st plaintiff suddenly ran across the road, the 1st defendant ought to have seen her, and in any event if that be so, the injury could not have been to the right leg, but to the left. Moreover, any damage to the vehicle by the impact would have been to the front of the vehicle and not to the left side mirror. There is also no evidence that the vehicle mounted the pavement. So also there is no evidence that the 1st plaintiff was in the process of crossing from the mountain side of the road to the seaside. The left side mirror would have been damaged because the 1st plaintiff was walking closeby. The irresistible inference would therefore be that the 1st plaintiff was not observant and was therefore negligent. He has therefore failed to rebut the presumption in Article 1383(2) of the Civil Code by proving that the damage was caused solely due to injured party. Accordingly I find that the 1st defendant is liable for the accident. As paragraph 2 of the plaint which avers that the 1st defendant at all material times was employed by the 2nd defendant and acting with the scope of employment has

been admitted the 2nd defendant would be vicariously liable in damages.

Damages

The 1st plaintiff was 11 years old at the time of the accident. The report of the Orthopedic Surgeon *(P4)* states that the fracture of the tibia and fibula was treated by open reduction and fixation with the plate. She was warded in hospital with a plaster of Paris cast for 13 days. The plaster cast was removed three months later, and the plate was removed by Surgical intervention six months thereafter. As regards injuries to the mouth, the report of the Maxillo – Facial Surgeon *(P2)* states that the laceration of the lower lip was sutured and that the upper anterior dento– alveoler fracture was fixed with wire. The wire and splint were removed on 15th December 1998.

The 2nd plaintiff Lorna Volcy, the mother testified that her daughter had difficulties in taking food for a long time. She could not walk properly until the plaster cast was removed. She still had to use crutches. Medical appointment cards *(P1-to P1(d)* were produced to establish that the 1st plaintiff had to make several visits to the hospital for follow up treatment and assessment. She claimed a sum of Rs.4900 as taxi fare incurred for transportation, at the rate of Rs.150 per day.

The 2nd plaintiff also claimed Rs.10,000 as moral damages, and Rs.200 paid for the medical report *(P3).* She testified that she was working as a storekeeper, but as there was no one to look after her daughter, she missed work. However no proof was adduced regarding any loss of earnings. She stated that she felt "*deep sadness"* in seeking her daughter suffering in hospital. Further, she was inconvenienced as a result of having to attend to the injured child, transporting her several times to hospital and generally being anxious about her recovery.

Kingsley Leste was the taxi driver who transported the 1st plaintiff on several visits to hospital, and later to her school. He charged Rs.160 per day for about 10 trips to hospital and Rs60 per day for transportation to the school. For the school trips he received about Rs.1200 per month for about one year.

First, as regards the claim of the 2nd plaintiff, the Court accepts that she suffered inconvenience, pain of mind and anxiety consequent to the injuries suffered by her minor child as a result of the negligent act of the 1st defendant. In the circumstances, I award her a sum of Rs.3000 as moral damages. As for expenses incurred, I also award a sum of Rs.200 paid for the medical reports. However there is no proof of taxi fares paid to the driver. The driver was unable to state the exact number of trips made to the Victoria hospital and to the school. On the basis of the appointment cards produced, I would limit the claim to 10 hospital trips which would have cost Rs.1600. I would also limit the school trips to one month, which would at the rate of Rs.60 per day amount to Rs1200. Accordingly I award a total sum of Rs.6000 to the 2nd plaintiff.

As regards the 1st plaintiff, she undoubtedly suffered immense pain and suffering at the time of the injury and during the surgical interventions and the post operative period. In considering the quantum of damages, I would consider the following precedents for comparative injuries and awards.

In ***Simon Maillet v. Louis (CS. 117 of 1990),*** the plaintiff sustained a fracture of the left tibia and fibula. After initial treatment, he continued to have pain in the ankle and also had a limp. The Court taking into consideration the nature of the injuries and the associated pain and suffering awarded a sum of Rs.30,000 as

moral damages.

In ***Sinon v. Kilindo (CS. 225 of 1992)*** the plaintiff suffered a compound comminuted fracture of the right tibia and fibula. The plaintiff was only 20 years old and was engaged in sports activities before the disability. On a consideration of the injuries, pain and suffering, loss of amenities of life and the age of the plaintiff, a sum of Rs.69,197.20 was awarded.

In ***Bouchereau v. Panagary (CS. 110 of 1996)*** the plaintiff suffered a comminuted fracture of the right tibia and fibula, a fracture of the maxilla bone multiple fractures of the ribs of the right chest and multiple laceration of the skull, body, limbs and right eye. There was residual incapacity of the right leg, weakness and defect in eyesight and difficulty in chewing food due to the injury in the jaw. On a consideration of previous awards of this Court for similar injuries I awarded a global sum of Rs.75,000 for pain and suffering and moral damages, and a further sum of Rs.10,000 for loss of amenities of life.

In the present, case there is no medical evidence of a permanent or partial incapacity. The 2nd plaintiff testified that the injury affected the child for about 2 years. That is plausible as the metal plate on the leg was removed only after six months of the accident. Hence the 1st plaintiff would have suffered pain during this period, and was also inconvenienced as she was unable to attend school for sometime. However on an assessment of the prejudice caused, and on a consideration of previous comparable awards, I award a sum of Rs.50,000 under the head of pain and suffering anxiety, distress and discomfort. No award is made under the head of permanent injury and disability. However on a consideration of the age of the 1st plaintiff at the time of the accident, I am satisfied that a young

child was deprived of an active life for about two years, and that her studies were disrupted during that period. Hence I award a further sum of Rs.10,000 under the head of loss of amenities of life.

Accordingly, judgment is entered in favour of the 1st plaintiff in a total sum of Rs.60,000, and in favour of the 2nd plaintiff in a sum of Rs.6,000 payable by the 1st and 2nd defendants jointly and severally, together with interest on each of those amounts, and one set of costs.

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A. R. PERERA

JUDGE

Dated this 22nd day of March 2006