IN THE SUPREME COURT OF SEYCHELLES

MR. WILLIAM PRUDENCE

V/S

MR. JULIEN MONDON

Civil side No. 9 of 2000

Mr. Ally for the Plaintiff

Mr. D. Lucas for the Defendant

JUDGMENT

***Gaswaga*, J**

The Plaintiff is a farmer of Danzilles, Bel Ombre, Mahe who was at all material times enjoying the peaceful possession of his property until the 25th day of June 1999, as alleged in the amended plaint, when as a result of the defendant's action of blasting rocks a rock which was under his control and direction rolled into the Plaintiff's shade house standing on his farm and damaged it together with some seedlings. He further contends that the rolling of the rock onto the farm was due to the defendant's *faute* or negligence which assertion is denied by the Defendant who stated that on that occasion, just like the previous two occasions while on the same site, all the required precautions were taken before the blasting exercise and he therefore disclaims the damage caused on the Plaintiff's farm.

Article 1382 (2) of the Civil Code provides that "*fault is an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused. It may be the result of a positive act or an omission.*" According to **The Collins Dictionary and Thesaurus** one

is said to be negligent if they are "*lacking attention, care or concern*"

There is ample evidence to prove that on the afternoon of the day in question there was a rock lying on the seedbeds in the Plaintiff's farm. The Defendant and Mr. James Bristol, a Police Officer with the Seychelles National Guard who was at the scene during the blasting, in this regard corroborated the testimony of the Plaintiff. What is disputed however by the Defendant is the size of the rock that was in the garden, which he says was not as big as described by the Plaintiff, and the allegation that the said piece of rock originated from the rocks being blasted by the Defendant. It was also agreed that there was no blasting exercise done anywhere near or around the Plaintiff's house on that day. The Court had opportunity to visit the place where the blasting was done and the garden. As portrayed in the photographs (Exhibits PE 1 and DE.1) the two places are not far from each other while the alleged place of the blasting is located at a much higher level, almost on top of the mountain while the garden is at a lower level. There is relatively a steep gradient between the two places.

It was deposed by the Defendant that when they are going to blast they have to follow certain safety procedures and visit the area with a police officer to notify and alert all the neighbors and people around. That on this particular occasion they piled gunny bags filled with earth around the rocks to be blasted and other rocks were placed along the boundaries of the compound of the property, in the direction of the Plaintiff's house to prevent any escape of the pieces of rock that may chip-off. All the people including the workers at the site were evacuated. Further that the police officer was there to monitor the proper use of the dynamite and the putting in place of the requisite safety measures before blowing the final whistle for everybody to take cover. That during and after the blasting the Defendant and police officer did not see any rocks that had rolled off to any of the adjacent

properties.

It should be noted that when the Defendant and the police officer were leaving the place-driving down the hill the Plaintiff stopped their vehicle and invited them to have a look at the rock which he said had just rolled onto his garden immediately after the sound of the blast. The Defendant and the police officer testified that the rock had red soil on it and had been there for some time before that day’s blast. But the Plaintiff says the rock rolled onto the seedbeds that day as he was working in the garden and he had to run away for safety. From the evidence on record this Court is convinced that the rock that was found in the garden of the Plaintiff was there as a result of the blasting activities of the Defendant. It is inconceivable how the two could tell that the rock had been there before the blasting yet it was their first time to visit the Plaintiff’s garden. Had it been there before and given the damage it caused on the farm, the Plaintiff would have reported the matter earlier than then. Although some safety measures were put in place as related by the defence witnesses, the said precautions were not sufficient to stop the rocks from rolling down the steep slope. Moreover, the piece of rock that chipped-off was forcefully driven away by the dynamite blast that is why it rolled across the two roads leading up the mountain before finally resting in the garden. For the rock to roll up to the garden it required some reasonable initial force like that caused by a blast. It could not have been the JCB Tractor that sent the rock into motion otherwise it would not have moved that distance let alone cross the two roads. The fact that the police officer and the Defendant did not see the rocks rolling from where they had taken cover does not mean that the rock could never have rolled down the hill. Given that the Plaintiff had twice successfully blasted rocks at the same scene cannot prevent such occurrence at the next blasting.

In such circumstances a prudent person ought to have known that the blasting

needed more preventative measures to be taken to intercept rocks that might chip-off and fly away from rolling down the steep gradient where the Plaintiff's garden is located. More care and attention was to be exercised. The rocks were at all material times during the blasting under the custody and control of an expert blaster, the Defendant and if he failed in his duty, like he did, to control or direct the same and as a result some damage, loss or injury is caused then he should be held liable in damages. Further, in French law, liability may arise even in cases where it is proved that the defendant has taken every possible precaution and all the means not to harm or inconvenience his neighbors and that his failure is due to the fact that the damage is the inevitable consequence of the exercise of his actions. **See Desaubin Vs United Concrete Products (Seychelles) Limited (1977) SLR.**

According to **Article 1382(1) of the Civil Code** *"every Act whatever of man that causes damage to another obliges him by whose fault it occurs to repair it."*
The Plaintiff has claimed damages under the following heads:
See Article 1384 (1) of the Civil Code.

Particulars of loss, inconvenience and damage

i. Shock SR 2, 000/-.

ii. Moral damages for distress, inconvenience and anxiety SR 2, 000/-.

Loss of earnings SR 9, 000/-.
Cost to replace the seedlings SR 5, 000/-.
(incl. Loss of earnings for the time spent)

Total SR 18, 000/-.

In an action where damages are sought, one of the duties of counsel owed to both the Court and their client is to put before the Court material that would enable it to

arrive at a reasonable figure by way of damages. **See Fulugensio Samako Vs. Edirisa Ssebugwawo (1979) HCB 15.** It was indicated in the amended plaint that the Plaintiff was to rely on the medical report and the assessment of damages by the Ministry of Agriculture and Marine Resources but the same were not produced hence leaving the Court to assess and estimate the damages basing on 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. **See Aerial Advertising Co. Vs. Bachelors Plea Ltd (1938) 2 ALL ER P.788**

Both parties and the police officer testified that the path through which the rock rolled on the garden before finally resting was visible and it is not disputed either that it hit the supporting poles of the shed house which partially collapsed on the seedbeds. Again it is beyond the region of dispute that seedlings in the seedbeds, Chinese cabbage, spices, beans, water Mellons and other crops were destroyed. The Plaintiff had to replant the crops but as a result of the delay in supplying the hotels and the market he used to sell the vegetables to the said buyers found new suppliers. He consequently lost income as it took him three months to have another harvest. That the Plaintiff used to get about SR 3.000.00 to SR 4.000.00 per week from the sale of vegetables in the market. Although, admittedly the Plaintiff was paid SR 4.000.00 by one Philip Rath who had earlier on been sued jointly with the Defendant for the same damage caused, he contends that the said sum was not adequate as it only covered the cost of the (hanger) shed house but not the seedlings.

The Plaintiff said he was depressed and stressed, developed high blood pressure and had to visit Doctor Chetty for treatment. He claims a sum of SR. 4.000.00 for the shock suffered as a result. About four seedbeds were destroyed. Ten to fifteen

packets of seeds, each costing SR 15, were planted and it takes the Plaintiff two days to plant the seeds in a single seedbed.

In **<u>Felix Camille Vs Seychelles Breweries Ltd Civ Appeal No.6 of 1996</u>** it was held that for one to successfully claim under the heading of shock, *the* “*shock*” *must be of such a nature that it causes damage to body or mind. Usually, there must be partial or total damage to the nervous system*.

There is no evidence that the Plaintiff was in any state of shock or depression when the rock fell onto his garden. Merely stating and claiming a sum of money without proving loss of income cannot move a Court to award damages in respect of such claim. Accordingly the un-established claim for shock like that of loss of earnings must fail. However I would accept that the Plaintiff suffered some loss, inconvenience and anxiety and also incurred a cost to replace the seedlings. On a consideration of all the circumstances of this case (not forgetting the compensation of SR. 4.000.00 already received by the Plaintiff) I shall award the full sum of SR 2.000.00 as claimed for moral damages and another sum of SR.4.000.00 found suitable to represent the claim under the fourth head of damages.

Judgment is accordingly entered against the Defendant in the sum of SR.6.000.00 together with interest and costs.

D. GASWAGA

<u>JUDGE</u>

Dated this ………… day of December, 2006.