

# IN THE SUPREME COURT OF SEYCHELLES

FELIX MARIE

PLAINTIFF

VERSUS

ANTOINE REGIS MOREL

DEFENDANT

Civil Side No 187 of 2003

Mr. A. Juliette for the Plaintiff

Mr. S. Rouillon for the Defendant

## JUDGMENT

### **Perera J**

This is a delictual action in which the plaintiff claims damages arising from personal injuries suffered in a road traffic accident.

Admittedly, the plaintiff was a pedestrian, and the defendant was the driver of motor vehicle bearing registration no. S. 2204. It is averred that on 1<sup>st</sup> February 2003, the plaintiff was knocked down by the said vehicle while walking on the Public road.

The defendant avers that the accident occurred "partly as a result of the plaintiff's contributory negligence". He also avers that he "*saw the plaintiff only at the last moment due to his wind screen being smashed just before the collision*".

Article 1383(2) of the Civil Code contains a presumption of fault on the part of the driver of the vehicle in these circumstances. That presumption can be rebutted by proof that the injured party was solely negligent or that it was the act of a third party, or an act of god external to the operation or functioning of the vehicle.

The defendant was charged before the Magistrates' Court with the offence of dangerous driving in case no Cr.150/03, and was convicted and sentenced.

The defendant has in the present case conceded liability, and hence only the issue of the quantum of compensation remains to be decided.

According to the medical report filed by the plaintiff, the following injuries have been recorded.

- “- Multiple abrasions overlying knee bilar, right hand and left elbow
- Haematoma left side of frontal scalp
  - Fracture right patella (about 2 x 4 x 2 cm)

Fracture right humerus”

Plaster of Paris cast was applied to treat the fractured sites, and was removed one month later. The doctor has not noted any complications.

The substantial injuries are the two fractures. In the case of **Simon Maillet v. Louise (C.S. 177 of 1990)**. The plaintiff suffered a fracture of the left tibia and fibula. He had a permanent disability of 25% and a permanent limp. He was awarded Rs30,000 for pain and suffering and permanent disability, and Rs10,000 for loss of amenities of life. In **Simon v. Kilindo (CS. 225 of 1992)** a sum of Rs35,000 was awarded for a similar injury. In **Danny Mousbe v. Jimmy Elisabeth (S.C.A. no 14 of 1993)** the Court of Appeal affirmed an award of Rs.40,000 in respect of a compound fracture of the right tibia and fibula with swelling and effusion of the knee. In the case of **Harry v. Nella Hoareau (CS. 393 of 1997)** the Court awarded Rs.35,000 for pain and suffering and Rs.15,000 for loss of amenities and enjoyment of life to the plaintiff who had similar fractures.

In the present case, the plaintiff claims Rs.120,000 for pain and suffering, Rs.20,000 for inconvenience, anxiety and distress, Rs.20,000 for permanent disability, Rs.200 for medical report and Rs.1000 for hospital expenses. The plaintiff did not testify regarding this claim. It was agreed by Counsel that awards be made on a consideration of the medical report and awards made by this Court in similar cases. Hence on the basis of previous comparative awards, I determine the quantum of compensation as follows-

1. *For pain and suffering, including inconvenience, anxiety and distress Rs.35,000*
2. *No award is made in respect of the alleged permanent disability as it has not been proved.*
3. *For medical report – Rs.200.*

*No award is made in respect of hospital expenses, as they have not been proved.*

Accordingly, judgment is entered in favour of the plaintiff in a sum of Rs.35,200 together with

interest and costs.

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A.R. PERERA

**JUDGE**

Dated this 21<sup>st</sup> day of May 2007