

IN THE SUPREME COURT OF SEYCHELLES

BERNARD ELIZABETH

PLAINTIFF

VERSUS

TIMOTHY LAFORTUNE

DEFENDANT

Civil Side No 5 of

2007

Mr. S. Rajasundaram for the Plaintiff

Defendant - absent and unrepresented

JUDGMENT

Perera J

This is a delictual action in which the plaintiff claims damages from the defendant in respect of damages caused to his motor vehicle bearing no. S. 3363. It is averred that on 27th July 2006, the defendant took the said vehicle from his possession without permission or lawful authority and was involved in an accident at the Providence Industrial Estate. He therefore claims-

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|----|---|---|-------------------|
| 1. | Cost of repairs | - | Rs. 57,000 |
| 2. | Cost of hired vehicle | - | Rs. 36,000 |
| 3. | Moral damages for anxiety, loss of comforts etc | | <u>Rs.100,000</u> |

Rs.193,000

The defendant who was duly served with notice of action, defaulted appearance and hence the case was heard ex-parte.

The plaintiff in his testimony, produced an estimate of repairs dated 20th September 2006 from "Ultra Tech Auto Body" garage for Rs.55,100 (exhibit P1). It was also estimated that the stereo system was also damaged and that the estimated cost of repairing was Rs.2500. Hence the total estimate would be Rs57,600. The plaintiff

testified that he paid the full amount and that it took three months for the repairs to be completed. During that period he hired a vehicle, for which he claims Rs.36,000. However he produced a receipt dated 3rd November 2006 for Rs.4120 being car rental for 14 days. (exhibit P2), and a further receipt for Rs.1500 dated 15th May 2007 . The latter receipt cannot be considered as it is outside the period of 90 days which the plaintiff stated was the time taken for repairs. Moreover this case was filed on 8th January 2007.

The Court accepts the uncontradicted evidence of the plaintiff that he paid Rs.57,000 for the repairs, as that amount is reasonable considering the extent of the damage disclosed in the estimate. As regards the hiring charges, in the absence of evidence that an alternative hiring vehicle was used for 90 days as averred, Rs.4120 is awarded for 14 days. The moral damages claimed are however exaggerated. Compensation in delictual actions being compensatory and not punitive, the Court awards a sum of Rs.5,000 under that head.

Accordingly, judgment is entered in favour of the plaintiff in a total sum of Rs.66,120 together with interest and costs.

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A.R. PERERA

JUDGE

Dated this 25th day of June 2007