IN THE SUPREME COURT OF SEYCHELLES

CHRISTOPHER VITAL **PLAINITFF**

VERSUS

THE ATTORNEY GENERAL **DEFENDANT**
(Acting for and on behalf of the
Government of Seychelles)

Civil Side No 348 of 2005

Mr A. Derjacques for the Plaintiff

Mrs Carolus for the Defendant

JUDGMENT

B. Renaud J

The Plaintiff alleged that he is a self-employed welder and the Defendant (The Attorney General), through the Ministry of Health, ensures the provision of medical services in Seychelles.

In its Statement of Defence the Defendant raised a "**Plea in limine litis**" that – *"The Plaint is bad in law and has to be struck off"* because the Defendant is not a body that ensures the provision of medical services in the Seychelles and averred that the Defendant is the legal representative of the Ministry of

Health, which is the body that ensures the provisions of medical services in the Seychelles.

The Plaintiff, upon request, was granted leave to amend the caption of the Plaint to cite the Defendant as – "**The Attorney General of National House, Victoria acting for and on behalf of the Government of Seychelles".**

The Defendant elected not to pursue the plea limine litis and that was abandoned and therefore is now not an issue.

In its amended Plaint, the Plaintiff alleged that he is a self-employed welder and the Defendant is the legal representative of the Ministry of Health ("Ministry"). The Defendant herein represents the said Ministry, which Ministry ensures the provision of medical services in Seychelles.

On 13th April, 2005 an employee of the Defendant drove motor vehicle GS 7707, which belongs to the Defendant, negligently, causing the Plaintiff to sustain injuries. The particular of injury is – fracture shaft of right femur.

The Plaintiff also alleged that at the time he sustained the said injuries the said motor vehicle was in operation and it was as a result of its operation by an employee of the Defendant that the Plaintiff sustained the said injuries. Further, and in the alternative the Plaintiff averred that he sustained the said injuries as a result of the negligence of the employee of the Defendant. He particularized the negligence of the Defendant as follows:

a. *The employee of the Defendant failed to heed sufficiently or at all oncoming vehicles;*
b. *The employee of the Defendant drove at an excessive speed;*

c. *The employee of the Defendant failed to keep any or any proper lookout whilst driving the said motor vehicle.*

It is now the claim of the Plaintiff that as a result of the above he has suffered loss and damage which he particularized as follows:

a. Pain and suffering - SR200,000.00

b. Moral damages - SR 50,000.00

Residual disability - SR 35,000.00

c. Medical Report - SR 200.00

Total SR 285,200.00

In its Statement of Defence the Defendant denied all the material averments of the Plaint and put the Plaintiff to the strict thereof.

The Defendant stated that the 13th April, 2005, an employee of the Defendant drove motor vehicle GS 7707, which belongs to the Defendant but put the Plaintiff to strict proof that the employee of the Defendant drove vehicle GS7707 negligently thereby causing the Plaintiff to sustain the injuries particularized in the Plaint. The Defendant also averred that any loss or damage that the Plaintiff may have suffered was not caused by the Defendant on the 13th April 2005. The Defendant further averred that if the Plaintiff suffered the alleged or any loss and damage, the same was not caused by the employee of the Defendant and the Defendant is not liable to the Plaintiff

as alleged or at all.

In the circumstances, the Defendant denied that the Plaintiff is entitled to the relief claimed or any relief for the reasons alleged or at all.

PW1 Dr. Vijay Kumar Gupta an Orthopedic Specialist testified that, at the request of the Principal Secretary of the Ministry of Health, he drew up a medical report dated 15th November, 2005, on the Plaintiff Mr. Christopher Vital. The patient was admitted with multiple fractures, shaft femur on 16th January, 2005 as a result of road traffic accident. He was operated by open reduction and fixation by plate and screws and was discharged from hospital in good condition. Unfortunately he was informed that when the Plaintiff was coming to physiotherapy in the ambulance on 13th April, 2005, he fell down as a result of sudden jolt and re-fracture his femur of the right leg and broke the plate that was in his femur. When he was admitted on 16th April, 2005 his whole leg right up to the chest was put in cast. Exhibit P2 is a picture showing the Plaintiff in cast. The cast was re-opened after one month and he was again operated on 16th May, 2005. The broken plate was removed and then replaced this time by two plates and screws and bone grafting were done. This was done by a second operation which you have to open up, remove the bone to do the grafting. The operation was successful and the patient was discharged on 31st May, 2005. Exhibit P3 is a photograph showing the injury with Exhibit P4 being a photo of a close up. He was last seen on 16th September, 2005.

Fracture is healing, and hopefully there will be 100% recovery. The medical report is Exhibit P1. The witness last saw the Plaintiff on 19th January, 2007

and noted that his fracture was healed. The Plaintiff complained that he could not run and had a slight limp because the injured leg is a bit shorter.

Under cross examination the witness stated that there was no permanent disability and except for the shortening of the leg by I to 2 cm. At the time of the second fracture the first fracture was not completely healed. It would have taken 3 t 6 months for the fracture to heal. The second fracture could have been caused by a fall with severe impact.

The witness opined that when the Plaintiff was injured on 13th April, 2005 in the Ambulance, he must have suffered pain and discomfort. Again during the period 13th April to 16th May, the Plaintiff suffered pain and had to be administered pain killer. The Plaintiff was totally immobilized during the period he was admitted in hospital. After the operation the Plaintiff suffered pain. It will take a long time for the person to start walking and in this case it took one year.

PW2 Christopher Vital, the Plaintiff, testified that he is 27 year old Mechanic and also a Driver. He was injured in January, 2005 following a car accident and inter alia broke his right leg and was admitted in hospital. His leg was placed in cast for 2 weeks after which he was operated. A plate was put on the femur of right leg. He was discharged from hospital in February and after that up to April he had to undergo physiotherapy. The hospital vehicle collected him twice weekly from his home and took him back each time. There was always a driver and a porter in vehicle GS7707 which is a bus belonging to the Ministry of Health. On 13th April, 2005 at about 9.30 to 10 a.m. they came to pick him up in that vehicle. They were going down using the Union Vale road to collect another patient and dropped that other patient

at English River Clinic. Then the driver, Mr. Verney Hallock, went to Roche Bois where they only make a turn and went through Bel Eau and the driver was driving a bit fast around 60 to 70 kmph. The Porter was with Driver in front and he was at the back.

According to him, when the driver turned a bend at Bel Eau at a speed of 75 kmph there was a car that has been parked – they (Driver and Porter) were not concentrating as they were talking. The Driver applied the brake instantly. Where he was sitting with her girlfriend Debra Anacoura they glided from back of the bus to front. The bus has a long seat one on each side. He was sitting midpoint of the bus on the right side. When the Driver applied the brake, her girlfriend was sitting close to him, she jolted and he also jolted. There are not seat belts in the bus. There were no arm rests in the bus. There were no handle to hold onto in the bus. He was sitting sideways and when was jolted he just left the seat and fell in front on the floor and hit his right side on the floor. Her girlfriend held her hand on the side of the bus. The Driver stopped the bus and her girlfriend and the Porter helped him up. He then started feeling pain. They brought him to Physio Clinic and when he reached there they helped him to disembark and he tried to use his crutches but he was in pain. At the Physio Clinic he told the Nurse (Wahida) what had happened and that he was in pain. The Nurse started the Physio but had to stop because of the pain. He was allowed to go home with the advice that he applied ice on the pain. He insisted on seeing a Doctor at the SOPD but he was told that the Doctor was busy and to return on the Friday. The next day he again tried to contact his Doctor by phone but could not get him. On the Friday he tried to contact the Doctor but again could not get him. Later when he called someone told him to hang on until the Monday and he had no choice. The pain was so intense that on the

Saturday morning he could not bear it anymore. He could not wake up. He then called an Ambulance to take him to a Doctor who examined him, took an X-Ray and he was informed that the steel plate in his leg had been broken. He was admitted in hospital and his leg, from ankle to waist, was placed in POP cast. The first day that the cast was pout he could not breathe properly and the cast had to be removed part of it. For 8 weeks in that cast he was not able to move at all and had only to lie on a bed on his back and could not turn. He had to use a catheter and potty. After two week she was discharged from Hospital and went home in POP. Four to five Porters helped to take him home up to his bed. Two or three days later he had fever and they came to fetched him and took him back to hospital and was admitted for observation and tests. They found that the plate was causing infection and he was sent for surgical intervention. The POP was completely removed and he was placed on traction for one and half weeks when he was taken again for surgery. During the whole period he was in great pain. He was operated again on 16th May, 2005. He stayed in hospital for a further 2 to 3 weeks completely bedridden. He was released on 30th May and thereafter he could only move with 2 crutches. He was always in pain and was boring. He then had to return to Hospital to remove surgical stitches and every two weeks thereafter had to do physio for about 3 months.

The witness added that now his right leg is shorter than the other. He cannot make movements like bringing heavy things or even run or doing any sport. He used to play football but now he cannot.

Under cross-examination the witness clarified that there was no connection between the front and rear part of the bus. Two different doors have to be used. The Porter is supposed to be there to help patient. The incident

happened on a Wednesday 13th April. H denied having Physio on Friday 15th. Because of the permanent steel in his leg he cannot stand for very long nowadays.

PW3 Debra Anacoura testified that in the morning of 13th April, 2005 she was travelling from Pointe in a bus belonging to the Ministry of Health. The Plaintiff was also in that bus together with some other people. She was travelling with her husband on that day. The bus reached Bel Eau and it stopped suddenly. At that time all the other passengers had been dropped off and there was only her husband and her in the bus. The bus driver is called Verney Hallock and there was another man seated next to him in front. At the rear of the bus there are two sets of long seat measuring about 2 metres one on each side facing each other with nothing in the middle of the bus. The seat is made of metal with a sponge cover. It has neither armrest nor handle. When the bus goes round a bend one has to hold onto the seat under your leg. The Plaintiff was still using crutches on that day. The witness said that she fell down and the Plaintiff held on tight to his crutches. His leg seems to be breaking because the driver was not cautious and was driving fast about 65 to 75 kmph. The driver applied his brake, they both fell down. She fell on her hand and she then felt pain in her hand. The Plaintiff said that his leg was painful. She explained that she came from her seat and fell on the floor of the bus in a sort of kneeling position with her hand pressing down on the floor of the bus. Her husband was in front and she was behind. She stayed on the floor for about 5 minutes before she woke up. Whilst on the floor, her husband was still sitting holding his crutches very strongly. Her husband did not fall on the floor but made sudden movement and moved on his eat when the bus stopped. She was not facing her husband whilst sitting on the seat immediately before the bus stopped. When she was

falling she could not see all the movements of her husband because she was looking towards the floor. When the Driver asked her husband if he was alright, her husband said that his leg was painful. They then went directly to Mont Fleuri as her husband was going for physio there. When he went for his physio he said that his leg was painful and the nurse told him that may be his muscle was painful. He did not see a Doctor on that day. He then went straight home and was told to apply ice and to come to see a Doctor on the coming Monday. Her husband remained in bed as he could not move. He was taken to see the Doctor in an Ambulance on a stretcher because he could not walk and his leg was swollen.

Before the accident on 13th April, her husband had improved and was able to walk about a bit with the help on his crutches. He walked only inside and around the house.

The Defence side called 4 witnesses.

DW1 Lisette Gomme testified that on 13th April, 2005 she was working at the Victoria Hospital and had the opportunity to see the Plaintiff who was following physiotherapy because of a fractured femur. The Plaintiff usually comes for therapy. On that day while doing some exercises he told her that he was feeling too much pain which led to him not completing his exercises. She advised him to put some ice on the pain and then he left in the bus. He told her that he been in an accident. The Plaintiff was supposed to come back two days later on 15th April.

Before the 13th April 2005 everything was going well. It was only on that day

the he had difficulty.

DW2 Waheeda Payet testified that she is a Senior Physiotherapist and had been so for the past 19 years employed by the Ministry of Health. The Plaintiff was a patient of hers. He was admitted because he had a fracture. They were the first ones to treat him but he was later transferred to English River as a patient who can take transport. On Friday 15th April as the assistant was not there so she treated him. On that day he came on his own and undertook treatment. They were checking his range of motion. His demeanour was alright. He did not complain. If the Plaintiff had a re-fracture of his femur and there was a metal plate and the metal broke he would have to take his treatment or else he would have been unable to walk. On that day he was walking.

Before 13th April the Plaintiff was undergoing treatment and he was improving since he could walk without crutches. She could not say if his fracture had closed or knitted because there was no X-ray done. There was deformity and abnormal movements. She made a report when the mother of the Plaintiff came on the following Monday. The witness enquired about the accident and she was informed by the driver that it was about the brakes. Her report is dated 20th April, 2005 and is now **Exhibit P7**. The witness said that there was no accident. She said that she treated the Plaintiff on 15th April. Before the 13th the Plaintiff was using crutches because the Doctors were deciding when to repair the fresh fracture. She said that in the bus there was a wheel chair strapped just behind the driver's seat and then on both sides there is a metal bench. There was no armrest and no overhead handle. The Plaintiff was made to travel in the bus because that was all that

was available. There had never been any incident before. In her point of view management should improve that.

DW3 Verney Hallock testified that on 13th April, 2005 he was working as a Driver and he recalled the Plaintiff. He went to pick him up at Anse Etoile where the Plaintiff lives then he went to Belonie to pick up another patient, they then went through Bel Eau and in one of the bends there was a vehicle parked he applied the brakes and the lady who was with Vital fell. He saw her after she had fallen. He thought that he was driving at about 30kmph because they were approaching a bend which meant he had to slow down. H said that he did not stop abruptly. The Plaintiff remained where he was originally. He was sitting on the right side behind him.

He did not recall if the Plaintiff was on crutches when he collected him on that day to take him for physio as he had done before. He did not know that the Plaintiff had a fracture leg, he just picked up patients. He believed that he was the one who collected the Plaintiff every Mondays and Wednesdays to attend physio since January. He did not collect in February. As a driver with the Ministry of Health bringing patients to the Hospital he knew for sure that the patient was not stable. He had been driving since 1980 and he became a driver in 2001. He did not undergo any special training as an ambulance driver. He was only a standby driver and had not driven an ambulance before. He had polio since his childhood and is limping. The security for the patients in the back of the bus consisted of a wheelchair and handles. The inside of the bus is about 3 metres long. There are two benches on each side with three overhead handles and the wheelchair is secured behind the driver's seat. He was driving and could not see the lady falling on her buttocks. There was a Porter who checked her and she was

alright. She had fallen on the floor of the bus and the Plaintiff was still sitting on his seat and therefore he assumed that he had not fallen. The witness admitted that he was not wearing a seatbelt on that day whilst driving.

From where the Plaintiff was sitting he could have held on to the wheelchair. There was also a handle where the Plaintiff was sitting.

DW4 Richard Louis testified that he was a Porter employed by the Ministry of Health since the previous 5 years. On 13th April, 2005 as usual he went to collect patients including the Plaintiff at Anse Etoile. There was a lady with him. The witness said that he was sitting in front. When they got to Bel Eau junction there as another vehicle and they had to stop and that was when the lady who had come with Mr. Vital fell. The driver was not speeding but to take the bend he had to slow down. He did not stop abruptly. He saw the lady after she had fallen. He asked them whether they are alright. He saw the Plaintiff Mr.Vital who was next to the wheelchair. Previous to that the lady was sitting on the left side and Mr. Vital was on the right. He was close to the wheelchair so he held onto it. All four wheels of the wheelchair were strapped. Even if there was to be an abrupt movement the wheelchair would not move. Mr. Vital got out and the bus and walked when he reached the hospital.

He did not recall if the Plaintiff had crutches. When the lady fell she fell towards the back on the floor and she would not hit anything while falling. They were not sitting directly opposite each other. He advised the patients to always put the crutches on the floor. As a Porter he helped the patients as the person who is in charge of their safety. He was responsible to facilitate their movements but while they are on the move he sat in front. He was may

be chatting to the driver at the time. The braking was normal. She only fell at Bel Eau because she might have let down he guard.

Did the employee of the Defendant drove vehicle GS7707 negligently on 13th April, 2005 thereby causing the Plaintiff to sustain the injuries as particularized in the Plaint? Was any loss or damage that the Plaintiff may have suffered caused by the negligence of the driver of the Defendant on the 13th April 2005?

Is the Defendant is liable to the Plaintiff as alleged or at all?

The evidence shows that on the 13th April, 2005, whilst the Plaintiff was being transported in vehicle GS7707 an incident happened at a bend at Bel Eau which caused the Plaintiff's girlfriend to fall to the floor of the vehicle.

Whilst the Plaintiff's witnesses stated that the driver of the vehicle applied the brakes abruptly which caused the Plaintiff's girlfriend to fall, the Defence witnesses stated that the driver slowed down but did not apply the brakes.
The evidence also shows that the Plaintiff suffered a re-fracture of his right femur. This is shown by the medical report produced by Dr. Vijay and by the evidence of the Vijay himself.

What the Plaintiff has to prove however and on a balance of probabilities is that the re-fracture of the Plaintiff's right femur was as a result of the driver applying the brakes on that fateful day.

The Plaintiff testified that he was thrown forward and fell on the floor when the driver applied his brakes abruptly yet his witness Ms Anacoura testified that she was

thrown forward to the floor of the vehicle but that the Plaintiff remained seated as he was leaning on his crutches. The evidence of the Porter Richard Louis stated that immediately after the incident he looked at the back of the vehicle and saw the Plaintiff's girlfriend on the floor where she had fallen but that the Plaintiff himself was still seated. The Porter further stated that the Plaintiff confirmed that he was all right when questioned by the Porter and did not complain of any pain.

I believe the evidence of Ms Anacoura which is corroborated by the evidence of Mr. Louis that the Plaintiff did not fall on the floor of the bus when the driver applied the brakes. The Plaintiff was simply exaggerating his version of the event. However, that does not go disprove that the Plaintiff was not adversely affected when the driver abruptly applied his brakes and that resulted in the metal plate broke.

Ms. Waheeda Payet testified that she was not present on 13th April 2005 and did not attend to the Plaintiff on that day. She attended the Plaintiff on Friday 15th April, 2005 and on that day the Plaintiff was walking. She stated that she made her report which is dated 20th April, 2005 based on attendance statistics. That report was made after the mother of the Plaintiff had complained to her on Monday 18th April, 2005. She denied that there was any accident.

From my observation of the witness when she was testifying I concluded that she was definitely going out of her way to absolve the Defendant of any responsibility. I do not believe her on the material particular and will not rely on her evidence and I consider these to be biased and unreliable.

Ms. Gomme testified that on 13th April, 2005 while doing some exercises the

Plaintiff told her that he was feeling too much pain which led to him not completing his exercises. She advised the Plaintiff to put some ice on the pain and then the Plaintiff left in the bus. The Plaintiff told her that he had been in an accident. The Plaintiff was supposed to come back two days later on 15th April. She added that before the 13th April 2005 everything was going well. It was only on that day that the Plaintiff had difficulty.

I find the evidence of Ms. Gomme to be truthful as to the material particular and accepted her evidence.

When analyzing the whole of the evidence I asked myself why the Plaintiff's girlfriend not fell off her seat throughout the trip from Anse Etoile via Mont Buxton etc where there are many bends to negotiate but only fell at a bend at the Bel Eau junction. The only answer, based on the evidence was that the driver stopped the bus abruptly. There was no proper handle in the bus for her to hold onto and there was not seatbelt provided.

I also believe that the Plaintiff had to hold on tightly onto his crutches when the brakes was applied abruptly, he sort of glided forward by the impact, and as he was seated sideways that caused the metal plate in his leg to break. The pain did not manifest immediately but as he progressively put his weight on the leg with the broken metal the situation worsened. I believed him when he said that he could not come for physio on Friday 15th April, 2005 because of the pain.

I find that the Plaintiff has proved his case on a balance of probabilities that the employee of the Defendant drove vehicle GS7707 negligently on 13th

April, 2005 thereby causing the Plaintiff to sustain the injuries as particularized in the Plaint. I likewise find that any loss or damage that the Plaintiff may have suffered was caused by the negligence of the driver of the Defendant on that day. The Plaintiff therefore is entitled to the relief claimed by him.

The Plaintiff is claiming as follows:

a. Pain and suffering		- SR200,000.00
Moral damages	- SR 50,000.00	
Residual disability	- SR 35,000.00	
b. Medical Report		- SR 200.00
	Total	**SR 285,200.00**

It is my judgment that the quantum of damages for pain and suffering in this matter is excessive and manifestly exaggerated.

In the case of ***Ventigadoo v Government of Seychelles CS 407/98,*** the Court made a distinction between physical pain and suffering as against mental pain and suffering. The Court inter alia stated that "Physical pain and suffering includes bodily suffering or discomfort. Mental pain and suffering may include mental anguish or loss of enjoyment of life, in other words, amenities of life. Following an injury, the injured is entitled to damages for both physical and mental pain and suffering for the past, present and future. The Court then went on to refer to the case of ***Georges Sidney Larame v Coco D'Or (Pty) Ltd CS 172/1998*** where the Court stated that in claims for fractured legs or arms from which a claimant recovers completely, the substantial award should be made for "pain and suffering", the main damages.

In the light of the above quoted cases and given that the Courts rarely distinguish between the different categories of pain and suffering and normally make a single global award to cover all of the Plaintiff's pain and suffering, residual disability should not have been claimed under a separate head but should have been included under the head of pain and suffering.

In the cases of of ***Julien Larose v Nichol Kilindo CS 149/2006*** and ***Felix Marie v Antoine Regis Morel CS 187/2003*** the Court makes a comprehensive review of awards in claims similar to the present one. In the first case, the Court awarded a total sum of SR60,000.00 to the Plaintiff of which a sum of SR40,000.00 was for moral damages including pain, anxiety, distress and discomfort. It the second case the Court awarded a sum of SR35,000.00 for pain and suffering, including inconvenience, anxiety and distress.

I take into consideration that there has been a devaluation of the Seychelles rupees since the filing of this case. I will take this into consideration when determining any award.

In the light of the above case law, I determined that a total sum of **SR75,000.00** for pain and suffering would be fair and reasonable in the circumstances.

The Plaintiff has claimed moral damages as a separate head. The moral damages ought not to be pleaded as a separate head of damages but rather as the main head under which the other categories of moral damages such as pain and suffering and residual disability would fall. I will not entertain this claim separately as it would allow the Plaintiff to make the same claim under

different heads. However, when determining the award for pain and suffering I included an element for moral damages

Under the head, Residual disability, the Plaintiff is claiming that there is a shortening of his right leg by 1 to 2 cm, that he has limited movement in that leg and that he cannot lift heavy objects. The evidence of Dr. Vijay is to the effect that the Plaintiff suffers from a slight limp and that there is a slight shortening of his leg. I believe that no award ought to be made with respect to the Plaintiff's claim that he has limited movement in his leg and that he cannot lift heavy objects as this has not been proved and is not substantiated by medical evidence either in the medical report produced by the Plaintiff or by Dr. Vijay. With respect to the shortening of the right leg and the slight limp, this has not been conclusively proved that this was as a result of the re-fracture sustained on 13th April, 2005 and not as a result of the first fracture sustained in January, 2005 and therefore no award is made in that respect.

Although there is no evidence to support the claim of the Plaintiff with regard to the disbursement regarding a medical report, I will allow this head of claim in the sum of **SR200.00,** as it is an obvious expense that the Plaintiff must have incurred to prosecute this case.

I accordingly enter judgment in favour of the Plaintiff as against the Defendants jointly and severally in the total sum of SR75,200.00 with interest and costs.

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B. RENAUD

JUDGE

Dated this 7th day of December 2009