

# **IN THE SUPREME COURT OF SEYCHELLES**

**VIVIENNE LABONTE**

**PLAINTIFF**

**VERSUS**

- 1. WILNA MATHIOT**
- 2. DORIS MATHIOT**

**DEFENDANT**

Civil Side No 192 of 2003

Miss Domingue for the Plaintiff

Mrs Amesbury for the Defendants

## **JUDGMENT**

**B. Renaud J**

The Plaintiff entered this Complaint on 15<sup>th</sup> July, 2003 praying this Court for an order that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are jointly and severally liable in causing damages to her and that they be ordered to pay her the sum of **SR80,200.00** with interests and costs.

This claim arose out of incident that took place on 10<sup>th</sup> July, 2000 where the Plaintiff alleged that the 2 Defendants assaulted her and caused her injury, pain, distress and loss, which she estimated at SR80,200.00 . The averred that the injury, pain, distress and loss was caused by the "*faute*" of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and that they are bound to make good her injury, pain, distress and loss.

The Plaintiff pleaded that both Defendants were convicted by the Magistrate's Court on 16<sup>th</sup> May, 2003 of the offence of assault occasioning actual bodily harm arising out of that incident.

The Plaintiff also pleaded that the assault on her consisted of blows to various part of her body and resulted in the dislocation of her left shoulder resulting in her being incapacitated for a period of 6 weeks.

The Plaintiff particularized her claims as follows:

Dislocation of left shoulder	SR50,000.00
Pain and Distress	SR20,000.00
Loss and Damage	SR10,000.00
Medical Report	<u>SR 200.00</u>
<b>Total</b>	<b>SR80,200.00</b>

Both the Defendants denied each and every averment of the Plaintiff and put the Plaintiff to strict proof thereof. They also alternatively pleaded that the sums of damages claimed by the Plaintiff are grossly exaggerated and excessive. They further pleaded that the matters complained of by the Plaintiff were caused wholly or in part by the negligence or contributory negligence of the Plaintiff.

The parties and their witnesses testified and from their testimonies I made the findings that follow.

The Plaintiff is now 63 years old and at the material time was living at Majoie. She knows both Defendants though not socializing with them. She never had any problem with them prior to 10<sup>th</sup> July, 2000 when the incident took place.

On that day she was going home from work after 4 p.m. She took an SPTC bus at the Central Bus Stand and the 2 Defendants were also boarding the same bus. The bus was overfull and the Inspector asked all excess passengers to come off. The 2 Defendants were

in front of the Plaintiff at that time. The Plaintiff told the driver that she will not disembark because there were two persons who came in after her and they should be made to disembark first. The two persons happened to be the Defendants. In the end all 3 managed to take the same bus. Unkind words were exchanged between the Defendants and the Plaintiff whilst on their way home in the bus and it ended with the Defendants threatening the Plaintiff with assault upon reaching their destination.

When the bus reached its destination at Majoie, the Plaintiff showed the Bus Inspector the two Defendants who had threatened to assault her. All the passengers then got off the bus. The 2 Defendants also got off and stood outside the bus waiting for the Plaintiff. The Plaintiff stayed back on the bus but finally had to come out. She disembarked holding her handbag in one hand and another bag containing fish in the other. At that point the 1<sup>st</sup> Defendant pounced on the Plaintiff and held her and started to fight her by throwing fist blows and hitting her all over her body. The Plaintiff tried to defend herself but she fell down on her knees still having her bags with her. Whilst on her knees she grabbed the 1<sup>st</sup> Defendant and that was when the 2<sup>nd</sup> Defendant joined in from the rear and hit the Plaintiff on her shoulder and on the middle of her head and caused injury to her palate. The spectacles Plaintiff fell off and break. Eventually a lady called Jeanine Bonne came to the assistance of the Plaintiff and warded off her assailants and helped her to stand up. Another lady called Flora, who has since passed away, picked up the pieces of her spectacles. The Defendants were using very hard blows on the Plaintiff when they were assaulting her.

The Plaintiff by then had bruises on her knees, and her shoulder had been dislocated and was hanging.

The sister of the Plaintiff was called and she came to help the Plaintiff home. Both of them went to the Police Station afterwards and the Police took the Plaintiff to Mont Fleuri Hospital. The Doctor attended to her and she was later also attended to by the Orthopaedic Consultant who sent her for X-Ray. She was later informed by the Consultant that she had fractured her left arm. She was treated by the Doctor, bandaged, given tablets and 6 weeks medical leave and was sent home.

She suffered a lot during those 6 weeks and until now she is still suffering. She cannot do her work as she used to do as she could not use her arm. She had to be constantly helped even to care for her own self. That also affected her employment as she could not discharge her duties and had to be given light duties for 2 months. Her arms now get dislocated easily since that incident. She attended Physiotherapy sessions for 3 months after the initial treatment.

One Christianne Rosalie who is the sister of the Plaintiff also testified. She was the one who came that evening to assist her sister to reach her home and thereafter went with her to the Police and Hospital. She corroborated the evidence of the Plaintiff to that extent. She also assisted the Plaintiff with her chores during the time that she was incapacitated due to the dislocation of her arm.

Dr. Danny Louange an Orthopaedic Surgeon at the Vitoria Hospital testified as to the injuries suffered by the Plaintiff. He confirmed that the injuries must have been very painful and could not have been caused by the Plaintiff carrying her bags. The injury could have happened as a result of a fall, he opined. He stated that dislocation may now re-occur as the Plaintiff is now of advanced age.

Mr. Michel Valentin an Assistant Registrar of the Supreme Court produced as **Exhibit P2** the Magistrate's Court criminal case file number 784/01 where the two Defendants namely Wilna Mathiot and Doris Mathiot were charged with the offence of "assault occasioning grievous bodily harm" and both were duly convicted for that offence on their own plea of guilty. They committed that offence on Vivienne Labonte, the Plaintiff in this suit on 10<sup>th</sup> July, 2000. Each of the two Defendants was fined SR700.00.

One Bernadette Labrosse testified that she was a working colleague of the Plaintiff at PUC and helped the Plaintiff with her duties as a cleaner when she was unable to do so because of her dislocated arm. The Plaintiff was not able to clean the windows, could not mop the floor, could not make the tea or wash the glasses etc.

The Defendants also testified and gave their versions as to how the situation developed which ended in the Plaintiff having a dislocated arm. Obviously according to their version it was the Plaintiff who insulted and eventually started assaulting them.

I do not believe the material aspect of their evidence regarding the fight that took place after the bus reached its destination at Majoie. The Plaintiff, who is a much older person than the Defendants, stayed back on the bus in fear, and waited for the Defendants to go home. The Defendants did not go their way after alighting from the bus but instead waited for the Plaintiff to disembark carrying her two bag thus having both her hands engaged and they attacked her.

I believe the version of the Plaintiff that she was assaulted by the Defendants on that day and was caused serious bodily injury, pain, distress and loss. That amounted to a "*faute*" in law on the part of the Defendants. This finding is supported by the very admission of guilt by the Defendants when they were arraigned before the Magistrate Court on charge of "*assault occasioning grievous bodily harm*", on the Plaintiff.

Article 1382(1) of the Civil Code of Seychelles states that - *“Every act whatever of man that causes damage to another obliges him by whose fault it occurs to repair it”*.

I find that the injury, pain, distress and loss that the Plaintiff suffered arose out of the *“faute”* of the Defendants and the Defendants are now liable to make good to the Plaintiff.

The Plaintiff is claiming a total of SR80,200.00. I have given consideration to the quantum of this claim, the circumstances how this *“faute”* took place, the injuries suffered by the Plaintiff, the time period that she was incapacitated and I believe that the claim is on the high side and needs to be adjusted downwards. Having adjusted the said claim I make the following awards:

Dislocation of left shoulder	SR20,000.00
Pain and Distress	SR10,000.00
Loss and Damage	SR 5,000.00
Medical Report	<u>SR 200.00</u>
<b>Total</b>	<b>SR 35,200.00</b>

I accordingly enter judgment in favour of the Plaintiff in the sum of **SR35,200.00** as against both Defendants jointly and severally, with interest and costs.

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B. RENAUD

**JUDGE**

Dated this 3<sup>rd</sup> day of December 2010

