IN THE SUPREME COURT OF SEYCHELLES

ANDREA MOUNAC

MARYLIN MOUNAC

JOURDANNE MOUNAC

VS

BENOITON CONSTRUCTION COMPANY LTD

Civil side no: 102 of 2009

Mr. Camille for the Plaintiffs

Mr. Ally for the Defendant

JUDGMENT

Burhan, J

The plaintiffs filed action against the defendant company, claiming a sum of Rs 114,420/= in damages from the defendant, in respect of the damage caused to furniture and equipment and injuries sustained by the 2nd and 3rd plaintiffs as a result of a "*faute*" committed by the defendant.

In this delictual action, the plaintiffs aver in their plaint, that an

earth moving machine belonging to the defendant and driven by an employee of the defendant, acting in the course of his employment, crashed into the house occupied by the plaintiffs, causing damage loss and inconvenience to them. The plaint further avers that the 2nd and 3rd plaintiffs, sustained injuries as a result of the said incident causing pain suffering and shock to them. The 1st plaintiff claims a sum of Rs 39,420.00 /= for damages to furniture and equipment as set out in the schedule of the plaint, while the 2nd plaintiff claims a sum of Rs 30,000/= for injuries to leg and arm and for nervous shock, while the 3rd plaintiff claims a sum of Rs 35,000/= for injury to her right leg and for nervous shock.

The defendant in his statement of defence, does not seek to deny the incident or the fault committed by him but admits same but states in his amended statement of defence (vide page 51 of the proceedings of 7th April 2010. 9.a.m) that the 1st plaintiff's claim had been settled in full and that the 2nd and 3rd plaintiffs have exaggerated their claim and that their loss and damage would not exceed Rs 25,000/=.

When one considers the evidence led in this case, it is clear that the defendant admits under oath and does not seek to deny in his statement of defence, that the said accident was due to his fault but contests the claims of the 1st plaintiff on the basis that a sum of Rs 10,000/= was paid by the insurance company, in full settlement of his claim for damages to furniture and equipment. When one considers the evidence of the 1st plaintiff in this regard, he admits that he received a sum of Rs 10,000/= from the insurance company and that he did sign a discharge form. He admits that the discharge form he signed stated payment was being made for the "contents of the house", but further states that the insurance company informed him, it was for the furniture only and not for his antiques. He further admits that the house was repaired by the insurance company. He insisted that even though the claim he submitted to the insurance company was similar to the claim to the schedule to the plaint, the insurance company had settled only the claim in respect of the furniture. He further stated that the value of his antiques would be around Rs 6000/= and this amount was not included in the settlement. Perusal of document P1 shows that the 1st plaintiff did in his letter of claim to the insurance company dated 9th August 2006 include souvenier /antique in the list of household items damaged as a result of the accident. It is apparent that the settlement of Rs 10,000/= by the insurance

company which the plaintiff states was not sufficient to cover his loss, was in respect of the contents of the house as shown by documents D1 and D2 after consideration of document P1, submitted by the plaintiffs.

When one considers the evidence in this respect, it is clear that the insurance company has made payment in respect of the contents of the house which judging by the document P1, was way below the sum claimed by the plaintiff and according to the 1st plaintiff's evidence insufficient. In the case of ***The Government of Seychelles v Charles Ventigadoo SCA No 28 of 2007*** Houdoul JA at para 17 held,

"In our law *cumul d'indemnites* operates in favour of the victim and not the tort feasor. An injured party can claim compensation from the author of a delict irrespective of any payment he might receive from his insurance company or any other source ***(Sinon v. Chang Leng (1974) No 47)***."

Considering the evidence given by the 1st plaintiff which stands corroborated by the evidence of the 2nd plaintiff and document P1 showing that he had made an immediate claim in respect of the said items, this court will proceed to award a further sum of Rs 10,000/= for damages to furniture and equipment, inclusive

off the antiques which the plaintiff himself values at Rs 6000/=.as the said sum paid by the insurance company is insufficient considering the contents of document P1.

Further, the plaintiffs in their evidence state they were inconvenienced as a result of the said accident as they had to leave the house till it was repaired, a fact not contested by the defendant, due to it being unsafe to live in and as rats and other pests could enter the house. In the case of ***Chaka Bros v Allied Agencies Ltd 1974 SLR No 15*** Sauzier J, awarded moral damages as he was satisfied that the plaintiff's suffered prejudice to their right to property and quiet enjoyment of their property, as they were inconvenienced to an extent as repairs had to be done to their shop which had been damaged due to the *"faute"* of the defendant. A similar situation exists in this case. Further the 2nd and 3rd plaintiffs have claimed damages for shock resulting to both of them as a result of the injuries sustained due to the fault of the accused in crashing his vehicle into their house. Considering the nature of the incident, it is very apparent that the 2nd and 3rd plaintiffs who were in their house at the time of the incident, would have suffered shock when a large earth removing vehicle suddenly crashed unexpectedly into their house. Therefore considering the inconvenience caused to all

three plaintiffs and in addition the shock caused to the 2nd and 3rd plaintiffs who were in the house at the time the accident occurred, this courts awards a sum of Rs 5000/= to the 1st plaintiff and a sum of Rs 7500/= each to the 2nd and 3rd plaintiffs as moral damages.

With regard to the injuries sustained to the 2nd plaintiff her evidence shows that as a result of the incident she was injured and her asthma attacks became more frequent. She stated she had pain in her left leg and right arm. This is supported by her medical certificate P3 which certifies that she had a 10cm large bruise and haemotoma on her right arm and an equally long abrasion on her left leg. Therefore this court is satisfied, a sum of Rs 20,000/= in damages would suffice to cover the suffering and pain experienced by the 2nd plaintiff in respect of her injury.

With regard to the injuries sustained to the 3rd plaintiff her evidence shows that as a result of the incident, she was injured and had a pain in her right leg This is supported by her medical certificate P4 which certifies that she had big bruise about 25cm x 10cm large on the medial side of her right thigh. Therefore this

court is satisfied a sum of Rs 20,000/= in damages would suffice to cover the suffering and pain experienced by the 3rd plaintiff in respect of her injury. For the aforementioned reasons this court is satisfied that the plaintiffs, have on a balance of probabilities, established that they are entitled to the aforementioned damages as a result of a *"faute"* committed by the defendant in this case. A breakdown of the damages awarded by court reads as follows;

1st plaintiff

Damage to furniture and equipment as per schedule
Rs 10,000.00

2nd plaintiff

Injury to leg and arm. Rs 20,000.00

3rd plaintiff

Injury to right leg. Rs 20,000.00

Moral Damages

1st plaintiff Rs 5,000.00

2nd plaintiff Rs 7,500.00

3rd plaintiff Rs 7,500.00

Total Rs 70,000.00

Therefore this court makes order that a sum of Rs 70,000/= as damages, be paid by the defendant to the plaintiffs as specified above, together with legal interest from the date of service of plaint on the tort feasor, to the date of final payment.

M. BURHAN

JUDGE

Dated this 5th day of June 2010