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IN THE SUPREME COURT OF SEYCHELLES

Georges Sinon of

Anse Aux Pins, Mahé

Plaintiff

VS

Seychelles Public Transport

Corporation of

Palm Street, Victoria, Mahé

Defendant

Civil Side No: 276

of 2005

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Mr. B. Georges for the plaintiff

Mr. K. Shah for the defendant

D. Karunakaran, J.

JUDGMENT

This is a suit for damages based on fault. The plaintiff herein claims the sum of Rs.116, 000/- from the defendant for loss and damage, which the plaintiff allegedly sustained in a road traffic accident due to negligent operation of the defendant's bus on the public road. On the other side, the defendant though admits liability, disputes the quantum of damages claimed by the plaintiff. According to the defendant, the amount claimed by the plaintiff is excessive, unreasonable and grossly exaggerated in the given circumstances of the case. Hence, the parties invited the Court to determine the only issue on the quantum of damages payable by the defendant to the plaintiff in this matter.

It is not in dispute that the plaintiff was at all material times, the owner of a motor vehicle, pick-up registration number S5444, and the defendant was a Public Transport Company owning and operating a fleet of buses for transportation of public passengers. On 23rd July 2003, at Anse Aux Pins, Mahé the said pick-up of the plaintiff and a bus belonging to the defendant were in collision. At the time of the said collision, the bus was in operation by the driver, who was then acting in the course of his employment with the defendant-company. Undisputedly, as a result of his operation the accident occurred. Consequent upon the said accident the plaintiff's pick-up was extensively damaged resulting in total loss and damage to the plaintiff. It is also not in dispute that the defendant is vicariously liable for the actions of his driver.

It is the case of the plaintiff that he sustained loss and damage as follows:

Value of the pick-up irreparably damaged:	Rs: 55,000. 00	
Loss of use at Rs.250/- per day for 240 days	Rs: 51,000. 00	
Inconvenience		Rs: 50,000. 00
	Total	Rs:
156,000. 00		
Less Rs: 40,000 paid by SACOS		Rs: 40,000. 00
	Net payable	Rs: 116,000.

00

The facts of the case relevant to the issue are these:

At all material times, the plaintiff aged 62, who had then been employed as driver with SPTC was the owner of a pickup registration number S 5444. On 23rd July 2003, while he was driving his pickup on the public road at Anse Aux Pins, Mahé the defendant's bus driven by one of its employee collided with the plaintiff's pickup. Following the said collision, the plaintiff's pickup sustained damage beyond economic repairs resulting in total loss to the plaintiff. Subsequently, when the plaintiff made his claim for compensation, the defendant admitted liability and the Insurance Company - SACOS - paid the plaintiff the sum of Rs 40,000/- being the insurance value of the pickup. However, according to the plaintiff the real value of the pickup at the time of the accident was at Rs 55,000/- since he had reconditioned the pickup by doing bodywork, repainting and had repaired the engine not long before the accident. Further the plaintiff testified that he was working as a farmer at the material time and was using the said pickup to manage his poultry business that is, for the transportation of chickens, eggs and food for the chicken. After the accident, as a replacement for the pickup, he had to rent other vehicles for about 240 days and was paying rent at the rate of Rs250/- per day. Therefore, the plaintiff claims Rs: 51,000. 00 for loss of use. In addition, the plaintiff testified that as a result of the accident, loss of his pickup and adverse impact on his business activities, he suffered inconvenience and for which he claims the sum of Rs: 50,000/- Further, the plaintiff testified that after the accident the wreck of the damaged pickup was taken away by SACOS, the Insurance Company. In the circumstances, the plaintiff claims the sum of **Rs: 116,000. 00** from the defendant.

I carefully considered the plaintiff's claim in the light of the entire evidence on record. As regards the claim for the actual value of the pickup, I accept

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the uncontroverted testimony of the plaintiff in that, the actual market value of the plaintiff's pickup at the time of the accident was at Rs: 55,000/- and so I find. Having said that, I note the plaintiff has already been paid the sum of Rs: 40,000/- by SACOS for the total loss of the pickup. Be that as it may, as regards the plaintiff's claim for loss of use, in respect of the rentals he allegedly paid for 8 months at the rate of RS240/- per day for a hired vehicle, to my mind, it appears to be exaggerated and unreasonable. First of all, having known that his pickup had been rendered beyond economic repairs and a write-off due to extensive damage, the plaintiff as a prudent person in my view, should have taken steps within a reasonable time immediately after the accident, either to purchase another vehicle as a replacement of his damaged pickup or to mitigate the damage due to loss of use, by using public transport or seeking a legal remedy at the earliest in a Court of law. But, he has waited for 2 years and has now come before the court with the instant action. Hence, as I see it, the blame has to be suitably apportioned between the parties in respect of loss of use. Having regard to all the circumstances of the case, in my view, the sum of RS: 10,000/- would be a reasonable and appropriate amount that should be awarded globally towards loss of use. For inconvenience the plaintiff suffered due to loss of use, I award the sum of Rs: 5,000/- In the final analysis, therefore, I enter judgment for the plaintiff and against the defendant in the sum of Rs: 30,000/- with costs.

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D. Karunakaran
Judge

Dated this 1st day of February 2010