

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES AT VICTORIA

Civil Suit No. 209 of 2011

Francis Deloire=====Plaintiff

Versus

Roch Nourrice=====Defendant

S Rajasundaram for the Plaintiff

Frank Elizabeth for the Defendant

JUDGMENT

Egonda-Ntende, CJ

- 1 The plaintiff contends that on or about the 12th February 2009, after being retained by the defendant to climb a ‘centol’ tree and cut down its branches, an accident occurred whereby the plaintiff fell from the said tree at an approximate height of six metres. It is contended that the said accident was solely caused by the fault and negligence of the defendant or his servants and agents.

- 2 The particulars of fault and negligence are stated to be,
 - ‘(a) He employed the plaintiff who was a minor at the time;
 - (b) He failed to provide safety for the plaintiff;
 - (c) He failed to supervise the plaintiff whilst he was on the tree;
 - (d) He failed to give proper direction to the plaintiff whilst he was cutting the branches;
 - (e) He failed in all the circumstances to take reasonable care for the safety of the plaintiff;
 - (f) He was negligent or reckless in the circumstances of the case.’

- 3 The plaintiff further contends that by reason of the said fault and negligence of the defendant he suffered injury, loss and damage. The plaintiff suffered Bilateral Haemo-Pneumothorax fracture of T8/T9 vertebrae with angulation and suspected spinal cord transaction and forearm fractures, resulting in a paraplegic condition and

both wrists having persistent coles fractures. The plaintiff was admitted into the intensive care unit of Seychelles Hospital.

4 The plaintiff itemised the particulars of loss and damage as follows:

‘Pain and Suffering=====Rs 900,000.00
Loss of enjoyment of life=====Rs 800,000.00
Loss of earnings=====Rs 500,000.00
Moral damages for distress and
inconvenience=====Rs 300,000.00
Medical Report=====Rs 200.00
Total =====Rs2,500,200.00.’

5 The plaintiff prays for judgment in the sum of Rs 2,500,200.00 against the defendant. The defendant denied this claim. In its written statement of defence the defendant admits that the accident in question occurred but denies any responsibility or liability for the same or the resultant injuries, loss and damage. The defendant denies that he employed the services of the plaintiff and then avers, ‘...that the Plaintiff asked him for a small day job and the Defendant told the Plaintiff to cut down a branch from a santol fruit tree on his property.’

6 The defendant further sets down 6 contentions why he is not liable for the plaintiff’s accident, injuries, loss and damage in the following words:

- ‘(a) the defendant never employed the plaintiff to do anything for him or on his behalf on the said date or any other date.
- (b) the defendant was under no legal obligation or otherwise to provide safety for the plaintiff who was not acting for or on his behalf on the fateful day but was acting independently.
- (c) the defendant was under no legal obligation or otherwise to supervise the plaintiff or anybody else on the day in question since the plaintiff was not acting in the course of duty or employment with the defendant and was not acting on the instructions of the defendant. The defendant avers that the plaintiff was acting independently on the said date.
- (d) the defendant denies that the plaintiff was cutting any branches on the said tree on the said date and further denies that he was under any obligation, legal or otherwise, to give direction to the plaintiff. The defendant avers that the plaintiff had asked him for permission to take the fruit from the said tree namely santol, which permission he had given to the plaintiff.
- (e) the defendant denies that he owed the plaintiff the said duty of

care on the said day and avers that the plaintiff was acting independently, solely and individually at all material times.
(f) the defendant denies that he was negligent or reckless in all the circumstances of the case since the plaintiff was acting on his own volition without the direction, instruction, supervision or control of the defendant.'

- 7 At the hearing of the case the plaintiff testified as well as Dr Marvin Fanny of Seychelles Hospital and Mr Terence Michel who was with the plaintiff on the fateful day. At the close of the case for the plaintiff the defendant opted to make a submission of no case and thereby forfeited his right to call evidence in this case.
- 8 The only evidence adduced in this case reveals that on the 10th February 2009, the plaintiff, born on 7th November 1992, was asked by the defendant to come to his home the following day and cut branches from a Santol tree for a fee. The plaintiff agreed. He did not turn up on the following day. The defendant called him and he promised to turn up the next day which he did. He reported at about 7.00am and the defendant sharpened a machete which he gave to him and showed him the tree which he was to cut off branches. The defendant left and the plaintiff started to work. He climbed the tree. He held on a branch with one hand and cut with the other hand. He was standing on lower branches. After cutting 2 branches, he lost balance and fell to the ground. He lost consciousness but was aroused by PW3.
- 9 PW3, Terence Michel was nearby engaged in the same exercise. PW3 had the plaintiff calling out his name and by the time he got to where he was, the plaintiff was on the ground, unconscious with blood coming out of his mouth and nose. PW3 called the defendant and the defendant's wife brought some water which he doused his face with. The plaintiff was taken to hospital.
- 10 A report from the hospital produced by Dr. Marvin Fanny sets out what happened at the Seychelles Hospital. The patient presented at the Accident and Emergency Department, complaining of chest pain, some difficulty to breathe, back pain and inability to move both of his lower limbs. He was awake but in distress. There was reduced air entry in his lungs. He was resuscitated, intubated and a CT scan confirmed Bilateral Haemo-Pneumothorax fracture of T8/T9 vertebrae with angulation and suspected spinal cord transaction. X-ray of upper limbs confirmed bilateral Colles

fracture. Chest drains were inserted in both sides and close reduction of the forearm fractures were done and immobilized in POP and the patient was transferred to the Intensive care clinic. On 17 February 2009 he was transferred to the D'Offay ward with paraplegia and both wrists had persistence Colles Deformities.

- 11 Further operations were done and he was eventually transferred to North East Point Rehabilitation Centre with thoracic corset and having regained some motor function but remained essentially paraplegic and with urine incontinence. He was eventually discharged and now stays with his mother.
- 12 The plaintiff testified that he is now helpless, totally dependent upon his mother, for everything including his toilet functions. At the time of the accident he had completed O levels and was waiting to go and start an Electrician's course at the Polytechnic but was unable by virtue of his condition to do so. He has lost all prospects in life and suffered loss of enjoyment of life. He has no sex life at all. He therefore claims Sr 2,500,200.00 for his injuries, loss and damage.
- 13 In his submission Mr Elizabeth stated that this was simply an unfortunate accident for which the defendant should not be held responsible as no fault had been established on the part of the defendant. The plaintiff had voluntarily accepted the assignment and accidents of that nature happened everyday without one or the other party being responsible for it. Mr Elizabeth further submitted the claims are grossly exaggerated.
- 14 It is clear that the plaintiff's presence at the defendant's premises was to carry out an assignment for a fee. The plaintiff was 17 years of age at the time and would rightfully be referred to as a young worker. The nature of the work was such that an employer ought to provide for the safety of his young inexperienced employee. It was not enough to hand him a machete and say, 'Go ahead,' unsupervised, 'climb that tree and cut off those branches above a certain level'. The employer, in this case the defendant, was under a duty to provide a safe system of work that would ensure that the young worker would be able to execute his assignment safely without injury. The nature of the work was clearly risky. A harness and or with a belt that would protect the young worker from slipping to the ground would have been sufficient to protect

the plaintiff had it been provided by the defendant. Or simply hiring of a vehicle with an elevated platform or cage for working above the ground outdoors.

15 I do not accept the defendant's claim that the plaintiff was here on his own account to collect fruit from the tree rather than on the defendant's account to cut off branches. There is no evidence to support the version of the defendant. In any case the written statement of defence did acknowledge that the defendant asked the plaintiff to cut down a branch from a Santol tree.

16 By turning away from the work site as soon as he had instructed the plaintiff on what to do, leaving the plaintiff unsupervised, and without any safety equipment, I am satisfied that the defendant acted in a negligent and reckless manner while he knew or ought to have known that the work conditions were dangerous. I find the defendant liable for the plaintiff's injuries, loss and damage.

17 I now turn to the injury, loss and damages suffered by the plaintiff. The injuries that the plaintiff suffered are not disputed. He is now a paraplegic with no feeling from his chest level through to his lower limbs. He has limited motion in his upper trunk but is entirely dependent upon others for the ordinary tasks of life. He cannot lead an independent life. It is evident to me that in absence of family he would have to hire a worker or should family abandon him he would have to have hired help.

18 At the time the accident occurred he was about to start vocational training as an electrician. All that is no longer possible. A career as a tradesman in that trade is gone. To that extent he has lost future earnings as an electrician or technician as the case would have been. Unfortunately his claim is not for loss of future of earnings. It is for loss for earnings. He had not started earning income apart from casual work as that which gave rise to the accident. I do not think he can claim loss of earnings as such, claiming the sum of R500,000.00. There is just no evidence to support this sum as the loss of earnings he has suffered. Similarly there is no evidence to support the claim of R200.00 for cost of the medical report.

19 No doubt the plaintiff's prospects in life were dimmed at a fairly an early age. He has lost enjoyment of some, if not, most of the pleasures of this life. He can not engage in

a sexual relationship. He cannot carry out bathroom functions, in privacy, without the assistance of some one. He is paraplegic. For this material damage he is entitled to compensation.

20 No assistance was provided to me on the scale of damages for similar injuries by way of past awards by this court. I have not been able to lay my hands on decisions that would guide me as to the amount in this regard. For the material damage to the plaintiff's body and life including pain and suffering, doing the best I can in the circumstances, I shall award a figure of R1,000,000.00. And for moral damages I shall award the sum of R200,000.00 only.

21 I enter judgment for the plaintiff in the total sum of R1,200,000.00 together with costs of this action.

Signed, dated and delivered at Victoria this 10th day of October 2012

FMS Egonda-Ntende
Chief Justice