

IN THE SUPREME COURT OF SEYCHELLES

BHARTI DHANJEE

PLAINTIFF

VERSUS

SHANTILAL VIRAL DHANJEE

DEFENDANT

Civil Side No 453 of 2006

Mr. Clifford Andre for the Plaintiff
Miss Lucy Pool for the Defendant

JUDGMENT

B. Renaud J

The Plaintiff entered this Plaint on 6th December 2006 praying this Court for a judgment in her favour in the sum of SRI 50,000.00 with interest and costs.

The Plaintiff is a medical doctor and the Aunt of the Defendant.

The Plaintiff averred that on 27th June 2006 the Defendant assaulted her by hitting her on the head as a result of which she fell and landed on the back of her head thus causing her injuries.

The Defendant denied all the above allegations.

The Plaintiff further pleaded that after the assault the father of the Defendant threatened her by telling her that next time they would make sure that she never gets up.

The above averment is also denied by the Defendant.

The Plaintiff pleaded that as a result of the act of the Defendant she suffered the following injuries:

Injury to the back of the head

Injury to the left elbow and right hand Injury to the spine

Injury to the left hip Injury to the mouth.

The Plaintiff avers that as a result of the foregoing she has suffered loss and damages as follows:

Pain, injury and suffering	SR100,000.00
Moral damages	<u>SR 50,000.00</u>
Total	SR 150,000.00

The Defendant denied the claim of the Plaintiff

In his Statement of Defence the Defendant in denying all the averments and claims of the Plaintiff contended that he was in no way responsible for the Plaintiffs injuries and averred that the Plaintiff through no fault of his or any other person lost her balance and fell sustaining minor injuries. The Defendant also put the Plaintiff to strict proofs of her allegations.

The Plaintiff testified on her own behalf and also called 4 other witnesses in support of her case. Her witnesses included 2 medical doctors, a Police Officer and another person. She also produced or caused to be produced Medical Certificates; Family Tribunal Case File FV/1 33/06; Police Statement and Photographs.

There is on record uncontroverted evidence showing that on 27th June, 2006 she was involved in an incident in the upper storey of her house in Victoria where she ended on the ground floor and sustained certain injuries. She went to the Police who accompanied her to her house and thereafter to the Clinic where she was examined by a doctor who gave her a medical certificate Exhibit P1. The Plaintiff noticed other injuries and went back to the doctor where she got another medical certificate dated 28th June, 2006. It is established as fact that the Plaintiff sustained injuries as pleaded.

What this Court now needs to establish is the causal connection between the injuries of the Plaintiff to these having been caused by the Defendant. This is to be established by the Plaintiff simply on a balance of probabilities. This is required as the Defendant had denied all the material allegations and called on the Plaintiff to strictly prove all the averments she made in her

Plaint.

The Plaintiff produced copy of a judgment of the Family Tribunal in case FV133/06 dated December, 2008 which is Exhibit P2.

The Plaintiff informed Court that her main witness is her mother who was at the time over 80 years old and unwell. Unfortunately that witness passed away before she could testify.

Included in the household where the incident occurred were the mother of the Plaintiff, the Defendant and his younger brother and their father.

The Plaintiff normally lived overseas and came to visit. The incident happened on one such visit. It is evident that the parties in that household were not living harmoniously and that there was much acrimony going on among them.

The Defendant testified that on that fateful day he had come to her grandmother's residence where he used to stay to collect certain items that he had left behind. He went to the kitchen where those items were. At that time there were exchanges of words among his aunt (Plaintiff); his father and his grandmother in the latter's bedroom. He went in to enquire what was going on. According to him, the Plaintiff attempted to slap him and he raised his hand to prevent her from doing so. As a result of his stopping his aunt from slapping him the Plaintiff fell over.

The Plaintiff reported that incident to the Family Tribunal and the latter made its finding that the Plaintiff accidentally fell and sustained injuries.

This incident was the subject of a criminal case before the Magistrate Court which ended in the case being dismissed for lack of evidence and the Defendant had no case to answer and was accordingly acquitted.

This Court however is not bound to adopt such findings if it has reason to believe otherwise.

I have meticulously analysed the evidence and gave consideration to the submissions of Learned Counsels. Of utmost concern to this Court is to establish on a balance of probabilities as to whether the Defendant gave a blow to the Plaintiff as a result of which she fell and suffered injuries. It is my finding and conclusion that the Plaintiff has not satisfied this Court as to this crucial fact. It remains in limbo as to whether the Defendant caused the Plaintiff to suffer the injuries pleaded. In such case it is incumbent of the Plaintiff to prove her assertions. I find that she has failed to do so. In the circumstances it is my judgment that the Plaintiff has failed to prove her case against the Defendant on a balance of

probabilities. I accordingly dismiss the Plaintiff. In the particular circumstances of this case I will make no order as to costs.

B. RENAUD

JUDGE

Dated this 1st day of February 2012

