

IN THE SUPREME COURT OF SEYCHELLES

Arnold Hoareau of

Anse Royale, Mahé

Plaintiff

Vs

Desire Vidot of

Au

Cap,

Mahé

Defendant

Civil Side No: 123 of 2006

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Mr. D. Lucas for the plaintiff

Mr. D. Sabino for the defendant

D. Karunakaran, J

JUDGMENT

At all material times, the plaintiff was the owner of a motor vehicle, a car - make Nissan - registration number S895 and the defendant was the owner of a motor vehicle, a pickup registration number S 7176. The plaintiff has instituted this action against the defendant, in delict arising from a road traffic accident, which involved a collision between the said two motor vehicles.

The plaintiff in this matter claims the sum of R165, 600/- from the defendant towards loss and damage, which the former allegedly suffered as

a result of the latter's negligent operation of his pickup on public road at Turtle Bay, Mahé.

The defendant denied liability stating that the accident occurred solely due to the negligent operation of the plaintiff's car at the material time. Hence, the defendant claims that any loss or damage the plaintiff suffered was solely due to his own fault. Besides, the defendant claims that as a result of the said collision his pickup also sustained damages for which the plaintiff is liable in law to make good. Thus, the defendant makes a counterclaim against the plaintiff in the sum of Rs109, 000/- for loss and damages.

The collision, out of which the action arose, occurred on 14th of August 2005, a sunny day at around 3.20 p. m on the public road at the T-Junction near Turtle Bay where Monte Posé-sub-road joins the Anse Royale Main Road. At the material time, the plaintiff (PW1) was driving his car travelling from the south to the north along the Anse Royale main road. The defendant was driving his 3 ton pick-up coming down from the direction of Monte Posé to join the main road. The collision occurred between their respective vehicles on the middle of the main road at the T-Junction.

According to the plaintiff, he was driving his car, at a normal speed of about 50 -60 KM per hour on his lane of the road; that is, on the mountainside lane of the Anse Royale main road. He was proceeding to Victoria. As he was driving, at a distance of about 8 meters before the T-Junction, he noticed the defendant's pick-up, which was coming at a very high speed from the Monte Posé -side-road to join the main road. There was no vehicular traffic in front; the road ahead was free and straight for about 40-50 meters. There were no other obstructions in between. The plaintiff could see clearly the defendant's pickup while it was entering the T-Junction turning towards the south. Although the pickup was being driven at a very high speed, the plaintiff testified that the defendant did not stop at the T-

Junction; he rather proceeded straight into the main road and was turning to his right in the direction of Anse Royale. In that process, the pickup suddenly crossed the main road in front of the plaintiff's moving vehicle; the right side of the defendant's pickup hit against the front part of the plaintiff's car. Although the plaintiff tried to avoid the collision, he could not do anything. He applied the break in vain. His car eventually received a heavy impact with great momentum.

Following the collision, the plaintiff's car sustained extensive damage at the front. The whole front part of the car got completely smashed. The plaintiff also sustained injuries on his forehead due to secondary impact. In fact, his forehead hit against the windscreen of his car and sustained multiple laceration vide Exhibit P13. Soon after the accident the police inspected the scene. They drew a sketch plan of the scene of occurrence - exhibit P1 - showing the point of impact, location of the T-Junction and the relative positions of both vehicles soon after the accident.

A couple of days later, the plaintiff requested a motor assessor, one Mr. Augustine Desaubin to make assessment of the damages to the car and evaluate the total cost estimate for repairs. According to the assessor's estimate, the spares required to be replaced cost at Rs 97,700/- and labour cost at RS10, 000/- vide exhibit P3, P4 and P5. Since the spares were not locally available and the Automobile Import Agents would take considerable length of time, to get those spares imported from overseas, the plaintiff himself had to go personally to Singapore to make purchase of the spares. He paid airfare to Singapore at Rs.3800/- and purchased the spares from Seng Tat Auto Parts private Ltd in Singapore for the total sum of S\$.2643.40 - vide exhibit P6 & P7. He also purchased used and other spares locally from different sources to complete the repairs to the car. In the circumstances, the plaintiff claims that he suffered loss and damages as follows:

(a) Cost of spares..... Rs 93,700. 00

(b) Cost of repairs (labour).....	Rs 10,000.00
(c) Moral damage (pain and suffering, (loss of amenities, disfigurement)	Rs 45,000. 00
(d) Loss of use @ Rs100/- per day for 4 months	Rs 12,100. 00
(e) Towage costs...	Rs 1,000.00
(f) Airfare expenses....	Rs 3,800. 00
Total	Rs 165,600. 00

In view of all the above, the plaintiff contended that the defendant is liable to compensate the plaintiff for the said loss and damages. Therefore, the plaintiff prays this Court for a judgment against the defendant in the total sum of Rs **165,600. 00**. He also claims interest on the said sum at the rate of 10% per annum and with costs of this action.

On the defence side, it is not in dispute that pick-up S 7176 belonged to the defendant and the defendant was the one driving the pick-up at the material time of the accident. However, the defendant in his testimony denied the entire version of the plaintiff as to how and under what circumstances, the collision occurred between the two vehicles. According to the defendant, he was driving his pick-up at a normal speed, on his lane that is, the seaside lane of the road. He had already negotiated the turn at the T-Junction and was proceeding in the direction Anse Royale. It was the plaintiff, who was coming from the opposite direction - very fast - at around 100 KMS per hour, drove his car negligently and came out of his lane, encroached onto the defendant's lane and caused the collision. In the same breath the defendant testified that since there was a fence with shrubs on his right side close to the T-junction, he could not see all the vehicles coming from the

south as he entered the T-Junction. According to the defendant, it was the plaintiff's vehicle that came suddenly and hit against the defendant's pick-up.

In view of all the above, the defendant contended that it was the plaintiffs fault that caused the collision. Therefore, the defendant denied liability alleging that the plaintiff's negligent operation of his car was the sole cause for the collision and the alleged damages to the pickup. In the circumstances, the defendant urged the Court to dismiss this action with costs.

Before I proceed to examine the evidence, I should mention here that the Court had the opportunity of inspecting the locus in quo and the T-Junction in question. I carefully perused the entire evidence including the documents adduced by the parties in this matter. Firstly, with regard to law involving the operation of motor vehicles, I note, Article 1383(2) of the Civil Code of Seychelles reads thus:

"The driver of a motor vehicle, which by reason of its operation, causes damage to persons or property shall be presumed to be at fault and shall accordingly be liable unless he can prove that the damage was solely caused due to the negligence of the injured party or the act of a third party or an act of God external to the operation or functioning of the vehicle. Vehicle defects, or the breaking or failure of its parts, shall not be considered as cases of an act of God"

This has been interpreted by the Supreme Court of Seychelles in **Sandra Vel Vs. Oswald Tirant & or -C. S 128 of 1977-** to mean that when a pedestrian is involved in an accident with a motor vehicle, the driver

of the motor vehicle is liable for any damage caused to the pedestrian unless the driver of the vehicle can prove that the accident was caused solely by the negligence of the pedestrian or the act of a third party or God. However, in ***A. Camille & another Vs. Sewood Ltd & another -C. S 204 of 1983-*** when a motor vehicle was involved in an accident with another motor vehicle, it was held that there is no presumption that may be called to the aid of the injured party. Each driver is liable to the injured/the other party unless he can prove that the accident occurred solely through the negligence of the other party or by the act of a third party or God. In the present case, it is a question of two drivers each of whom suffered damage to his vehicle, the presumption of law under Article 1382(2) arises against both drivers. In effect, both presumptions nullify each other. Now, the question arises whether any party has proved that the accident occurred solely through the negligence of the other party?

I diligently analysed the entire evidence on record. Firstly, having observed the demeanour and deportment of the plaintiff, I conclude that the plaintiff is a credible witness. I believe him in every aspects of his testimony particularly, as to his version how, why and the manner in and the circumstances under which the accident occurred. His evidence as to the cause of the accident is very cogent, reliable and consistent in all material particulars. Above all, his version that the collision occurred in the middle of the main road at the T-junction as the defendant's vehicle suddenly entered the main road in front of him, is corroborated by other independent evidence on record vide exhibit P1, which clearly shows that the point of impact lies at the T-junction. The Court also noticed during the site visit, some shrubs along the mountainside lane of the Anse Royale main road adjoining the T-junction. However, those shrubs could not have obstructed the defendant's view to check for the traffic movement on the main road. Had he stopped at the T-junction and had he checked for the moving traffic on the main road, this accident could have been averted.

After taking the entire circumstances into account, I am sure and find that the defendant drove his pick-up at a high speed. He did not stop at the T-junction to ensure that there was no traffic on the main road before joining the main flow of traffic. In fact, before joining the main road, he failed to ensure that his right side road was clear of oncoming traffic and safe for his use. To my mind, he has ventured a high risk as an imprudent driver and has blindly joined the main road, when he could have had a clear view of the oncoming traffic from the southern direction and so I find. I do not believe the defendant in his testimony that the plaintiff's car was driven on the wrong lane of the road at the material time and caused the accident. I completely reject the evidence of the defendant attributing fault on the part of the plaintiff. I find more than on a balance of probabilities that the defendant's negligent operation of his pickup S7176 was the sole cause for the collision. Hence, I find that the defendant is liable to make good the plaintiff for the actual loss and damages the latter suffered as a result of the accident.

As regards the defendant's counterclaim, since the accident occurred solely due to negligent operation of the defendant's pickup at the material time, the plaintiff is not liable in law to compensate the defendant for any loss or damage, which the defendant might have sustained from the accident. Hence, the defendant's counterclaim against the plaintiff is not maintainable in law. Hence, I dismiss the counterclaim accordingly.

Coming back to the plaintiff's claim for damages, although the quantum claimed for loss and damages under other heads appear to be reasonable and appropriate, the quantum claimed for moral damages in the sum of Rs 45,000/- , appears to be exaggerated and unreasonable. In my considered view, this claim should be reduced to Rs 15,000/- which sum would be reasonable and appropriate having regard to all the circumstances

of the case. In the final analysis, therefore, I award the following sums to the plaintiff:

(a) Cost of spares.....	Rs 93,700. 00
(b) Cost of repairs (labour).....	Rs 10,000.00
(c) Moral damage (pain and suffering, (loss of amenities, disfigurement)	Rs 15, 000. 00
(d) Loss of use @ Rs100/- per day for 4 months	Rs 12,100. 00
(e) Towage costs...	Rs 1,000.00
(f) Airfare expenses....	Rs 3,800. 00
Total	<u>Rs 135,600. 00</u>

Wherefore, I enter judgment for the plaintiff and against the defendant in the total sum of **Rs 135,600. 00** with interest on the said sum at 4% p. a, the legal rate as from the date of the plaint; and also I award costs in favour of the plaintiff.

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D. Karunakaran

Judge

Dated this 31st day of January 2012