

# IN THE SUPREME COURT OF SEYCHELLES

**Patricia Odile Sauzier** of

La Gogue, Mahé

**Plaintiff**

Vs

**Rolly Payet** of

Pointe

Larue,

Mahé

**Defendant**

Civil Side No: 42 of 2007

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Mr. S. Rajasundaram for the plaintiff

Mr. E. Chetty for the defendant

**D. Karunakaran, J**

## **JUDGMENT**

At all material times, the plaintiff was the owner of a motor vehicle, a car - make Subaru Vivio - registration number S11630 and the defendant was the owner of a motor vehicle, a car registration number S 434. 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 R140, 700/- 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 Providence, 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.

The collision, out of which the action arose, occurred on 11<sup>th</sup> May 2006, a sunny day at around 4.15 p. m on the public road opposite Peugeot Showroom at Providence, the spot where the 4 lane-road leading to town from the Airport merges into two-lane road. At the material time, the plaintiff (PW1) was driving her car with another passenger by name Joseph, travelling from the south to the north along the second lane from the left going towards town. The defendant was driving his car coming down from the direction of the Airport to Town along the Providence main road. The collision occurred between their respective vehicles on the middle of the main road near the point where the 4 lanes merge into two.

According to the plaintiff, she was driving his car, at a normal speed of about 40 KM per hour on her lane of the road; that is, on the mountainside lane of the Providence main road. She was proceeding to Victoria. As she was driving, she noticed the defendant's car, which was coming at a very high speed from behind tried to overtake the plaintiff's car from her left side to join the main road ahead of the plaintiff's car. The plaintiff could see clearly the defendant's car was overtaking from her left side. In that process, the defendant's car hit against the plaintiff's car on its left side with great momentum. The plaintiff's car overturned. The plaintiff and her passenger were thrown out into bushes along the roadside. Surprisingly, none of them

got any serious bodily injuries, except nervous shock for which the plaintiff was treated. The evidence given by the plaintiff in this respect runs thus:

*“When we got out of the car, I was shocked to see my car upside down. It was a miracle I did not get hurt. He (the defendant) came and asked me if I was hurt. I told him “how can you ask me that when you almost killed me?” The car hit me from my left hand side and my car overturned and I was thrown to the bushes. After the accident I called my husband and talked to the defendant. My brother-in-law took me to casualty”*

Be that as it may, on the same day the plaintiff took photographs of the scene of the accident and the damaged vehicle. The photographs were produced in evidence and marked as exhibit P4. The plaintiff’s car was damaged on its left hand side and the top. The car had also damaged in front as it hit against a casuarinas’ tree as it overturned. The car had thus sustained extensive damages. The plaintiff had to spend Rs 30,825/ plus labour and materials. It was subsequently repaired by a mechanic, one Kevin Hoareau (PW3). Some of the spare parts were purchased from Ahbaye Valabji vide exhibit P8. Some other items such as windscreen, bumper, and radiator were purchased second-hand from some individual sellers. It took almost three months for the mechanic to complete all the repairs. The plaintiff further testified that since she lived far from the place of her work, she had to hire a car for about 45 days for commuting to work vide exhibit P7.

In the circumstances, the plaintiff claims that she suffered loss and damages as follows:

(a) Cost of repairs and spares.....	Rs 30,825. 00
(b) Rental for Car hire.....	Rs 9,875.00

(c) Moral damage for anxiety, mental stress, shock... Rs 100,000. 00

**Total** Rs 140,700. 00

Mr. Antonio Joseph (PW2), who was a passenger in the plaintiff's car at the material time of the accident, also testified corroborating the plaintiff's testimony on all material particulars as to the collision in question. According to this witness, a couple of seconds before the collision, he noticed the defendant's car was coming fast behind the plaintiff's car. He immediately tried to tell the plaintiff about the danger behind. Before he finished telling it, the defendant's car was overtaking the plaintiff's car. In the process it suddenly collided with a loud noise and the plaintiff's car overturned. The evidence of this witness in this respect reads thus:

*"We heard a bang and the car overturned. I was in the car thinking what if my legs break. The defendant came and looked at us and said he thought we were dead"*

The mechanic Kevin Houareau (PW3), who repaired the plaintiff's car after the accident, also testified that he changed the bumper in front, the bonnet, the lights, the mud guards, the right door, the windscreen, the rear left light, and few other things which he could not recall. Furthermore, he testified that he received Rs7, 000/- for labour. He also testified that it took only one month for him to complete the repairs.

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 **140,700. 00**. She also claims costs of this action.

It is not in dispute that the car S 434 belonged to the defendant and he was the one driving that car 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 car at a normal speed, on his lane of the road. He was coming from the two-lane section, which merge into one, opposite Peugeot showroom at Providence. There were lot of cars in front of him. The plaintiff's car was right in front of him. He was not overtaking. Nearing the point where the two lanes are merging into one, the plaintiff's car, which was driven fast, on its own overturned and collided with the defendant's car and hence the accident. The defendant testified that he was not driving his car in a rash or negligent manner. As soon as he saw the overturned vehicle, he stopped and called 999. According to the defendant, it was the plaintiff's vehicle that was going in front of him suddenly overturned, rolled towards the mountain side of the road three times and hit against a casuarinas' tree and halted.

When the Court put questions to the defendant he clearly stated in his evidence that the accident happened at a point where his lane merged into the plaintiff's lane. He stated that he checked for the moving traffic on both sides of the plaintiff's lane before joining the one-lane road ahead. Therefore, the defendant contented that he was not at fault and so not liable to compensate the plaintiff for any loss or damage, which she sustained in the accident. In the circumstances, the defendant urged the Court to dismiss the action with costs.

Before I proceed to examine the evidence, I should mention here that this Court takes judicial notice of the location and the nature of the spot opposite to Peugeot Showroom at Providence, where two lanes on the mountainside of the Providence Highway merge into one lane. The merging point is very conspicuous and demarcated by white lines. For drivers coming from the direction of Airport to Town, particularly those who have no previous knowledge about the said merging point would obviously, be taken by surprise, as and when they suddenly, come across the merging point

without any warning. In fact, there is not even a signboard to warn the drivers beforehand. This point of merger is obviously, very prone to accident for obvious reasons. Incidentally, it is pertinent to note that the concerned authority may look into this matter and do the needful accordingly. Be that as it may.

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, as has happened in the instant case, 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) is activated 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 she is a credible witness. I believe her in every aspects of her testimony particularly, her version as to how, why, the manner and circumstances under which the accident occurred. Her evidence as to the cause of the accident is very cogent, reliable and consistent in all material particulars that lead to the only inference that it was the negligent operation of the defendant's vehicle at the material time that caused the accident. Above all, the plaintiff's version that the collision occurred close to the merging point of lanes since the defendant's vehicle suddenly entered into her lane in front of her, is corroborated by other independent evidence of Mr. Mr. Antonio Joseph (PW2). This witness has been the passenger and an eye-witness, whom I believe to be a credible witness. Had the defendant stopped at the merging point and had checked for the moving traffic before joining the other lane this accident could have been averted.

After taking the entire circumstances into account, I am sure and find that the defendant drove his car negligently at the material time. He did not stop at the merging point to ensure that there was no traffic on the main road before joining the main flow of traffic. In fact, before joining the main lane, 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 other lane of the main road, when he could have had a clear view of the oncoming traffic on his right side and so I find. I do not believe the defendant in his testimony that the plaintiff's car was driven on his 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 car S 434 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 later suffered as a result of the accident.

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 100,000/- , appears to be highly exaggerated and unreasonable. In my considered view, this claim should be reduced to Rs 20,000/- 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:

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|---|---------------|
| (a) Cost of repairs and spares.....                   | Rs 30,825. 00 |
| (b) Rental for Car hire.....                          | Rs 9,875.00   |
| (c) Moral damage for anxiety, mental stress, shock... | Rs 20,000. 00 |

**Total** Rs 60,700. 00

Wherefore, I enter judgment for the plaintiff and against the defendant in the total sum of **Rs 60,700. 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 30<sup>th</sup> Day of January 2013**