

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 341/2010

[2013] SCSC 74

RIVALTZ HOAREAU

Plaintiff

versus

HUBERT JOSEPH

First Defendant **EDWINA HEENES**
Second Defendant

Heard: 17 November 2011 and 4 June 2013

Counsel: Ms. Lucy Pool for plaintiff

Mr. Nicol Gabriel for defendant

Delivered: 5 November 2013

JUDGMENT

Burhan J

[1] The Plaintiff filed plaint seeking a sum of SR 660.000.00 as damages from the 1st and 2nd Defendants for loss and damage arising out of a collision with his vehicle and the vehicle driven by the 1st Defendant.

[2] It is averred that at the time of the accident the 1st Defendant had been driving his vehicle negligently resulting in the accident occurring due to the fault of the 1st Defendant. The 2nd Defendant was the owner of vehicle S 1077 driven by the 1st Defendant.

[3] A breakdown of the damages claimed follows;

(1) Damage to Taxi (Plaintiff's vehicle)	SR 350.000.00
(2) Loss of earning (1 year at average SR 1000 per day)	SR 260.000.00
(3) Moral damages or mental distress and inconvenience	SR 50.000.00
Total	SR 660.000.00

[4] The case proceeded only against the 1st Defendant as it was brought to the notice of court by both parties that the 2nd defendant had left the jurisdiction of Seychelles. The 1st Defendant filed a defence denying the Plaintiff's contention that the collision was a result of his fault stating further that the accident was as a result of the fault of the Plaintiff.

[5] The Plaintiff giving evidence stated he was a taxi driver and the owner and driver of a taxi bearing registration number S 4313 and the 1st Defendant was the driver of the car bearing registration number S 1077 owned by the 2nd Defendant.

[6] On the 12th of October 2008 he was driving from town to go to Cascade on the highway when at Roche Tortue junction Point Larue near the monument, he had stopped his vehicle at the junction to turn to Cascade when he saw a light coming with speed from the direction of Point Larue to town i.e. in the opposite direction and then he had heard a bang and the accident had taken place. He stated he had stopped his vehicle as a bus had been coming from Cascade to go towards Anse Aux Pins.

[7] The Plaintiff stated he was on his lane and after impact the left hand side of his vehicle was damaged. He further stated that when the bus started to move the 1st Defendant who was driving at a very high speed had come onto his lane as had he not done so, he would have collided with the bus. He stated after impact his vehicle had ended up on the island

on the other side of the road that goes to Cascade while the car the 1st defendant was driving ended up about 150 feet from the incident. The 1st Defendant had been taken away in an ambulance. He was injured but had not lost consciousness.

[8] It is apparent that both vehicles ended up on either side of the road. The vehicle driven by the 1st Defendant on the sea side of the road and that driven by the Plaintiff on the mountain side. He stated as a result of the impact his vehicle was completely damaged and a write off. The Plaintiff stated he had lowered the value of the car as the insurance premium was high and as a result of the accident he had no car and was out of work for a whole year up to December 2009.

[9] He further stated when he used his vehicle as a taxi, he would earn a sum of SR 1200 to 600 a day and therefore was claiming a sum of SR 260.000,00 for loss of earnings for a year at SR 1000.00 a day. He was claiming SR 350.000.00 for the vehicle and SR 50.000.00 in moral damages. He admitted under cross examination that he had received only SR 90.000.00 from the insurance as he had brought the insurance down to SR 100.000.00.

[10] Mr. Morel called by the Plaintiff stated he had on behalf of Savy Insurance assessed the damage done to the vehicle of the Plaintiff. He had recommended that the vehicle be written off due to the extensive damage on it. Mr. Jean Mahoune another witness called by the Plaintiff stated at the time of the incident he was a police officer working at Point Larue police station. He had issued a letter dated 26th March 2010 to Savy Insurance referring to the accident in which he had written that the driver of vehicle S 1077 was considered to be at fault. He admitted he had not gone to the scene of the accident that day. He had come to the conclusion on the sketch plan of the scene and the documents in the file. It is apparent he had not partaken in the investigations in respect of the accident. Thereafter the Plaintiff closed his case.

[11] The 1st Defendant gave evidence under oath and admitted that on the said day he was driving his vehicle S1077 from Anse Aux Pins to town. When he arrived at the Roche Tortue junction a green taxi all of a sudden crossed in front of him turning into Cascade.

He had pressed the brake but his vehicle had collided with the front passenger door and the back passenger door of the other vehicle. He stated it was his right of way and he had seen the vehicle stopped but then suddenly it had crossed in front of him. He stated he had attempted to avoid the car and had braked but the collision occurred. He denied that any vehicle or a Tata bus had come from Cascade and emerged on the highway. He stated after the accident he had been taken to hospital and persons had moved the car from where it had stopped.

- [12] Thereafter at the request of both parties a locus in quo was conducted to better understand the scene where the accident had occurred. Both parties thereafter tendered written submissions.
- [13] Having thus carefully considered the evidence, observations at the scene and the submissions of both parties, it is apparent from the photographs produced that the Plaintiff's vehicle had been extensively damaged from the front passenger side door to the rear even past the rear left passenger door. This clearly indicates the vehicle driven by the 1st Defendant had collided on the left front passenger side of the Plaintiff's vehicle as he was turning into Cascade. At the scene observation it was noticed that it was the 1st Defendant's right of way as he was on the main road driving towards town which at this junction was a single lane. The fact that the Plaintiff's vehicle after impact ended up on the mountain side (Cascade side) of the road further indicates that the impact occurred as the Plaintiff was taking his car across the road to the mountain side in order to go to Cascade.
- [14] The findings of officer Mahoun that the accident was as a result of the negligence of the 1st Defendant as based on the sketch plan is in doubt as it appears to this court that the directions marked as "highway towards Pointe Larue road" and "Point Larue towards highway road" are not accurate and not in line with the evidence given by both parties.
- [15] Therefore this court is satisfied that the accident was not as a result of the fault of the 1st Defendant. The Plaintiff is dismissed with costs.

Signed, dated and delivered at Ile du Port on 5 November 2013

M Burhan
Judge of the Supreme Court