

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 104/2010

[2014] SCSC159

EMMANUEL HAIDEE

Plaintiff

versus

ANDRE BEAUFOND

First Defendant

TERRY BARRA

Second Defendant

DAVE BONNE

Third Defendant

Counsel: Mr. W. Lucas for plaintiff

Mr. B. Georges for defendants

Delivered: 12 May 2014

JUDGMENT

Karunakaran Acting Chief Justice

The Plaintiff in this action claims the sum of Rs1, 600,350/- from the defendants jointly and severally towards loss and damage, which the plaintiff suffered as a result of a fault the defendants allegedly committed

against the plaintiff. The defendants denied liability and the entire claim of the plaintiff.

The facts of the case as transpired from the evidence on record are these:-

The plaintiff, aged 45 is a resident of Anse Boileau, Mahé. He is married and has a family with three children. In the past, he was an active sportsman. He had been a boxer and a karate-practitioner. He was serving in the Defence Forces. He was a soldier in the Army. However, since his early days he has been suffering from chronic epileptic attacks. He used to consume alcohol. He subsequently developed psychiatric problems. All these factors presumably aggravated his adverse medical and mental conditions. According to his wife, Mrs. Holy Haidee- PW3- the plaintiff was also suffering from loss of memory. Besides, his eye-sight was also not normal. He had myopia (short-sight), a visual defect in which distant objects appear blurred because their images are focused in front of the retina rather than on it. According to the ophthalmologist Dr. Nidith Verma - PW1- who examined the eyes of the plaintiff in 2010, such visual defects are very common especially, among the people of the plaintiff's age group. The plaintiff therefore, had to wear spectacles with corrective lenses, which according to the ophthalmologist, is normal. Such defect cannot be attributed to any trauma. The plaintiff had to take continuous medical and psychiatric treatment for his illnesses. He was on long term medication. Hence, he had to end his career with the Defence Forces. He took an early retirement and left the Army. In the middle of 2005, he got employment as a security officer in private sector. He joined a security firm called "SPS Security Agency", (SPS) which had been licensed to provide Security Services to the public and private institutions, companies and individuals in Seychelles.

Be that as it may, at all material times, the 1st defendant Mr. Andrew Beaufond (DW3) was the Managing Director of the said security firm SPS.

The 2nd and 3rd Defendants were also employed by the firm as Patrol Officers. All of them were working under the command of the 1st defendant.

A couple weeks after the plaintiff took employment with that security firm, an untoward incident happened while he was on duty in Town. During the night of 13th June to the morning of 14th June 2005 - that is from 6 pm to 6am - the Plaintiff was posted for duty as security officer at the premises of Maison de Palmes and Home Makers Building at Palm Street, Victoria. It was around 9 pm. According to the 2nd and 3rd defendants, the Patrol Officers, as usual, they were on a mobile patrol in Town. They normally go around different locations to supervise and spot check their security personnel fielded on duty. The supervisors came to the Home Makers premises for a spot check. The plaintiff who is supposed to be on duty that time was not seen in the premises. They looked around; but, the plaintiff was nowhere to be seen in the vicinity. They waited there for more than 15 minutes. Then they saw the plaintiff coming to the spot from the other side of the main road with visible signs of intoxication presumably, due to alcohol consumption. He could not walk straight. He was walking sluggishly without coordination. He was swinging left and right. He had a bottle in his hand. It had contained a brownish liquid, which looked like "jungle juice" (baka). When the supervisors went close and talked to the plaintiff, he smelt of alcohol. According to both supervisors, who carried out the spot check on the plaintiff, categorically testified that the plaintiff was under the influence of alcohol at the material time and unfit to be on duty as a security personnel. When the supervising officers, questioned the plaintiff about his disappearance from duty-premises and the bottle he had in his hand, the plaintiff became aggressive and started arguing with them. When the supervisors asked him to cool down, the plaintiff again started to fight with them. The supervisors immediately, telephoned their boss Mr. Beaufond - DW3- to come to the spot and resolve the issue with the drunken-security

personnel on duty. Soon Mr. Beaufond arrived at the scene. He also tried to speak to and pacify the aggressive plaintiff, who was violent, adamant and started to fight with Mr. Beaufond. According to Mr. Beaufond and both supervisors, when Mr. Beaufond was speaking to the plaintiff, he became very argumentative, aggressive and started fighting with him. Suddenly, the plaintiff tried to physically attack Mr. Beaufond and dived aiming at his head. Mr. Beaufond quickly stepped aside and the plaintiff fell on the ground face down. He was wearing spectacle that got broken. The crucial part of DW2's evidence in this respect runs thus:

“When he was on the floor Mr. Beaufond and I pulled him up. He wanted to fight so we restrained him and put him in handcuffs. We told him that we are going to take him to the office for him to relax and in the morning for him to proceed to his home. While we were restraining him, we never assaulted him. ... Before that incident his eyes were red looking blood I don't know why at first when we put him in the location, he did not have this in his eyes.”

According to the defendants, after this incident they took the plaintiff to their office at St. Claire Building situated at a distance of about 100 yards from Home Makers building and asked him to remove the uniform and change to his civilian clothes, which he had in his bag. The next day in the early morning, when he was apparently seen sober he went back home.

On the other side, the plaintiff in his testimony gave a different version as to the alleged incident. According to the plaintiff, he was asked to give an explanation for his absence from duty at the material time, but the same was not accepted by the 2nd Defendant who ordered him to return the company uniform immediately. However, the Plaintiff pleaded to give him an opportunity to explain in the office later during the day but the Plaintiff appeal was turned down. The Plaintiff was forced to undress himself and had to give the uniform to the 2nd Defendant who called the 1st Defendant to

come to the site. The 1st Defendant in the company of the 3rd Defendant immediately arrived at the scene and started to interrogate the Plaintiff. In the process of interrogation, the 1st Defendant punched into the left eye of the Plaintiff and smashed his spectacles. Then the 1st Defendant ordered the 2nd and 3rd Defendants to handcuff the Plaintiff which they did. All three Defendants punched the Plaintiff in the face until the Plaintiff fell to the ground. The defendants continued to assault the plaintiff by the foot kick all over his body. The plaintiff further testified that he was not drunk at the material time and was drinking only lemonade.

As a result of the defendants unlawful acts of assault, the Plaintiff claimed that he sustained injuries in his eyes and body and reported the matter to the Police at the Central Police Station and a case was immediately registered under the Crime Book entry No. 648/ 05. The police took him to casualty at the Victoria Hospital and the doctor gave him pills and an injection for pain. Then he went to the Central Police station slept there until the next morning and took a bus and went back to his house at Anse Boileau. However, Police Inspector Henry Faure (PW2) testified that although a complaint was registered at the instance of the plaintiff at around 2 a. m on the 14th June 2005, he had no direct knowledge or other information as to whether the plaintiff was taken to hospital and defendants were really charged with any offence or prosecuted before any court of law based on the complaint made by the plaintiff. Further, it is the case of the plaintiff that as a result of the said assault by the defendants, his eyes got injured, turned red, which impaired his vision. Besides, the plaintiff testified following the assault, he became epileptic and suffering from loss of memory. It is also the case of the plaintiff - as per pleadings in the plaint - that the Plaintiff who was 29 years old and following the assault by the defendants, his mental capacity has been deteriorated and could not take permanent employment. In the circumstances, the plaintiff claims that the act of the Defendants was unlawful and constitute a "fault" in law for which the Defendants are liable in

damages to the Plaintiff.

Therefore the plaintiff claims loss and damages as follows:-

- I. Injury with residue of permanent disability SR 900, 000. 00
- II. Pain and suffering SR 100, 000. 00
- III. Trespass on the Person SR 100, 000. 00
- IV. Moral Damage SR 500, 000. 00
- V. Medical Report SR 350.00

Total SR 1, 600,350.00

Hence, the plaintiff seeks the court for a judgment in the sum of SR 1,600,350.00 against the defendants jointly and severally for the loss and damage the plaintiff allegedly suffered.

I meticulously perused the entire pleadings, evidence including the exhibits on record. I carefully analyzed the submissions made by counsel on both sides and went through the relevant provisions of law. To my mind, following are the fundamental questions that arise for determination in this matter:

- a. Did the defendants commit any fault in law causing bodily injury or injuries to the plaintiff?*
- b. If so, was there any causal link between those injuries and the plaintiff's present myopic, epileptic and psychiatric conditions that resulted in loss and damages to the plaintiff?*
- c. Is the quantum claimed by the plaintiff for loss and damages exaggerated?*
- d. Is the defendant liable to compensate the plaintiff for the damages suffered?*

The plaintiff's action herein is based on fault. Hence, the principles of law applicable to this case are that which found under Article 1382(2) & (3) of the Civil Code of Seychelles. This Article reads thus:

(2) "Fault is an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused. It may be a positive act or omission"

"Fault may also consists of an act or an omission the dominant purpose of which is to cause harm to another, even if it appears to have been done in the exercise of a legitimate interest"

Before answering the first question, I would like to mention that I had the opportunity to observe the demeanor and deportment of the witnesses, while they testified in Court. Firstly, on the question of credibility, I do not believe the plaintiff in any aspect of his testimony as he did not appeal to me as a credible witness in any respect. I reject his version of the incident trying to attribute fault on the part of the defendants. His testimony, is inconsistent and unreliable on material particulars. In considering the entire circumstances surrounding the episode, I find that the defendants did not commit any error of conduct which would not have been committed by a prudent person in the special circumstances in which the alleged injury or damage was caused to the plaintiff. In any event, according to the plaintiff, he was assaulted by the defendants in 2005. But, he suffered blurred vision in 2010. In fact, there is no evidence on record to establish the causal link between the alleged unlawful acts of the defendants and the injury and damage now suffered by the plaintiff. The medical evidence of the ophthalmologist unequivocally suggests that the alleged assault has nothing to do with the eye-defect (myopia) or epilepsy or loss of memory suffered by the plaintiff. All those psychiatric and physiological ailments had been present in the plaintiff even before he took up employment with the defendants' security firm. The plaintiff's claim suggesting a causal link, as I

see it, is simply his guesswork and a speculation. This is not supported by any medical evidence. On a preponderance of probabilities, I find that since the plaintiff had admittedly been a psychiatric patient and more so was under the influence of alcohol at the material time, his behavior was aggressive and unreasonable. As testified by the defendants, such behavior obviously, necessitated them to restrain him from committing any further act of violence against them. Hence, I hold the defendants did not commit any fault in law; they did not cause any injury or damage to the plaintiff.

Indeed, the evidence of the plaintiff pertaining to the alleged incident of assault is very inconsistent, unreliable and self-contradictory. I believe the defendants in their material evidence as to how, and under what circumstances the plaintiff sustained his injuries on his face and broke his spectacles. The evidence of the defendants in this respect is cogent, consistent, credible and corroborative. All three defendants conducted themselves and acted as prudent persons in the entire episode.

In these circumstances, I find it was the plaintiff who unlawfully attempted to inflict the injuries to the 1st defendant at the material time and place. As regards the second question, it is evident that the plaintiff did not sustain any injury to his eyes that caused "myopia" or blurred vision vide Exhibit P1. The blurred vision, according to the ophthalmologist is normal in the condition of "myopia". The losses as pleaded by the plaintiff in his plaint are not genuine and exaggerated. In any event, the amounts claimed therein are baseless and unreasonable having regard to all the circumstances of the case.

In the final analysis, I hold that the plaintiff has failed to establish his case to the required degree in civil law. The defendants are not liable in delict to

compensate the plaintiff, for any loss or damages the plaintiff allegedly suffered. Therefore, I dismiss the suit and make no orders as to costs.

Signed, dated and delivered at Ile du Port on 12 May 2014.

D Karunakaran
Acting Chief Justice