

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CS 98/2009**

[201 ] SCSC

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**VIRGINIE CHARLES**

Plaintiff

versus

**PIERRE CONSTANCE**

Defendant

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Heard:

Counsel: Ms. Pool for plaintiff

Mr. Derjacques for defendant

Delivered: 3 July 2014

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**JUDGMENT**

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**Renaud J**

1. The Plaintiff is suing the Defendant claiming **SR550,000.00** with interest and cost, for loss and damage for injuries she suffered arising out of a traffic collision with the Defendant who the Plaintiff claimed to have been at fault due to his negligence.
2. The Plaintiff particularized her loss and damage as follows:
  - (i) Pain and suffering -SR300,000.00
  - (ii) Loss of enjoyment of life -SR100,000.00
  - (iii) Scar -SR100,000.00

(iv)	Moral damage mental distress and inconvenience	<u>-SR 50,000.00</u>
	Total	<b>-SR550,000.00.</b>

3. It is the case of the Plaintiff , who was then 16 years old, that on 8<sup>th</sup> May, 2005 she was riding her bicycle on the road on La Digue when she was allegedly hit by the motor vehicle registered S613 driven by the Defendant. At the time of the accident motor vehicle S613 driven by the Defendant was in operation and she alleged that it was as a result of its operation by the Defendant that the accident occurred. The Plaintiff also alleged that the accident was caused by the fault and negligence of the Defendant.
4. In his Statement of Defence the Defendant averred that the Plaintiff, whilst operating her bicycle, negligently collided with his vehicle. The Defendant also averred that the Plaintiff emerged from a side road and was transporting bottles of beer, her bicycle had no brakes and was unlicensed.
5. The Defendant contented that he was not negligent.
6. The Defendant further averred that he was not liable to the Plaintiff in law, and further still averred that the quantum claimed is grossly exorbitant.
7. The Plaintiff testified in person and called two witnesses, a Medical Doctor and a Road Engineer.
8. The Defendant testified and adduced the evidence of one eyewitness.
9. The facts as established by evidence show that on 8<sup>th</sup> May, 2005 the Plaintiff who was then 16 years old, was riding her bicycle on the road on La Digue from the direction of La Passe going towards L'Union on what is considered to be the major road that leads from La Passe to L'Union. That road originally ran parallel to the sea until sometime back when it was diverted to avoid going through the hotel compound separating the hotel from its restaurant. The diversion now runs behind the hotel/restaurant.
10. The major road now coming from La Passe goes to L'Union taking the diversion before reaching the hotel/restaurant. At that point the diversion turns to the left and goes for some distance until it reaches what used to be a secondary road. That secondary road comes inland going towards the seaside.
11. Before the diversion, that secondary road used to go straight from inland and

linked up with what was previously the major road.

12. Nowadays, when the diversion from La Passe abuts that secondary road there is no indication as to which traffic has the right of way. Upon reaching that point, it is very confusing to the users of that road. I will term that point as the “**critical spot**”. It is at that critical spot that the collision occurred.
13. Upon reaching that critical spot there are two possible scenarios that can take place.
14. First scenario is that - if one comes from La Passe and considers the diversion to be the continuation of the major coastal road throughout up to L’Union. That would appear to be perfect and reasonable in the circumstances. The diversion would be deemed to be a continuous major road from La Passe going to L’Union. In that case traffic on the secondary road coming from inland (Belle Vue/Grand Anse) would have to give way to traffic using the diversion. Likewise, traffic coming L’Union going to Belle Vue would have to wait and give way before crossing the major road to take the secondary road.
15. Second scenario is that - if one comes from La Passe going to L’Union using the diversion has to stop upon reaching the secondary road (Belle Vue) in order to give way to any traffic coming or going on that secondary road.
16. When the Court went on *a locus in quo* I observed that there are no road sign at the critical spot. Likewise, there are no road markings or any signs that indicate which traffic has to stop and give way and which traffic has the right of way at the critical spot. That is a crucial failure on the part of the Seychelles Land Transport Authority. The people of La Digue using that critical spot may possibly have their own silent code of conduct when operating their vehicles or transports at that critical spot. Unfortunately this silent code is not known to people coming from other islands. The Plaintiff in the instant case comes from Praslin.
17. A representative of the Seychelles Land Transport Authority, Mr. Parinda Herath, accompanied us at the *locus in quo*. He could not give an explanation to the Court as to why there are no road markings or signs at that critical spot to indicate clearly that traffic from La Passe should stop upon reaching the secondary road. Mr. Herath was also uncertain as to whether or not the road from La Passe to L’Union is the major road. However, it is clear from my observation when I was at the *locus in quo* that all traffics

from La Passe to L'Union do not stop upon reaching the junction with the secondary road. Such traffics appeared to me to consider the diversion from La Passe to L'Union as a continuous major road. Mr. Herath admitted that he did not know of the situation that existed before the diversion.

18. I find that the Plaintiff, like other road users that I observed maintain the standard practice that one has the right of way when on the major road and traffic on the secondary road has to give way. Similarly traffic on the major road going onto a secondary road has to wait for traffic on the major road to clear before crossing over onto the secondary road on the other side.
19. For the purpose of adjudicating this case I believe and find that the situation rehearsed in the first scenario above is the correct approach for the reason that, I cannot reconcile the concept of traffic following a major road then go onto a secondary road then back onto a major road, as the correct approach to rational traffic management. If that was to be the case, appropriate signs and markings ought to be there in order to clearly indicate that. Moreover, when a major road is diverted the diverted road is considered a continuation of that major road.
20. In the instant case the Plaintiff was riding her bicycle coming from the direction of La Passe going towards L'Union. Upon her arriving at the critical spot she continued her on way without stopping. Her obvious expectation was that traffic on the road coming from L'Union going onto the secondary road inland would stop because she ought to have the right of way.
21. The Plaintiff did not stop because she believed that she was on the major road therefore she had the right of way. On the other hand the Defendant coming from L'Union and going inland believed that as he was on a secondary road going straight inland therefore traffic coming onto that secondary road from the diversion should stop and allowed him the right of way. I believe that in the circumstances and for reasons stated above, the Defendant was under a gross misapprehension as he ought to have stopped and allowed the Plaintiff the right of way as the latter was following the major road. The misapprehension of the Defendant, as a resident of La Digue, may not necessarily be without reason.
22. In the circumstances I find the Defendant failed to accord the Plaintiff the right of way when he saw the Plaintiff on her bicycle on the major road. The Defendant saw the Plaintiff yet he failed to blow its horn, or otherwise alert

the Plaintiff to his presence so that the Plaintiff might have taken avoiding action. I find that the Defendant also failed to brake although he tried to steer, swerve, or manoeuvre his vehicle so as to avoid hitting the Plaintiff. His action was too late. I conclude and find that the act or omission of the Defendant in the circumstances amounted to a *faute* in law and is therefore liable in law to the Plaintiff for loss and damage.

23. A Medical Report dated 13<sup>th</sup> June, 2005 concerning the Plaintiff who was born on 26<sup>th</sup> February, 1989 was admitted in evidence as Exhibit P1 revealed that the Plaintiff was admitted at the Seychelles Hospital approximately 3 hours after a road traffic accident that occurred on 8<sup>th</sup> May, 2005 at 4 p.m. Her general condition was very bad with – dispnoe, hypoxia, pale, multiple laceration over the limbs, chest and back. Blood pressure read 130/110 – 110/50 – 90/50. Chest auscultation showed weak left air entry: percussion – left timpanitis; right – dullness. Her abdomen was soft, generalized painless and mild tenderness. Her liver and spleen was normal. Her rebound signs were negative. An X-ray investigation was done and the Plaintiff was admitted in the ICU department of Seychelles Hospital with the following lab., vital signs monitoring and treatment by surgeons and anesthetists was provided. Chest trauma: contusion of the bough lungs, left tension pneumothorax, right haemathorax, fracture of the 2<sup>nd</sup> to 5<sup>th</sup> ribs and left 2<sup>nd</sup> to 9<sup>th</sup> ribs was diagnosed. The Plaintiff was intubated and ventilated, bilateral chest drainages were inserted; blood transfusions, IVF, antibiotics therapy and symptomatic treatment was given. After improvement of the general condition, stabilization of the vital signs, she was transferred to the Hermitte Ward for the following of treatment on the 23<sup>rd</sup> May, 2005. The Plaintiff stayed 15 days in the Intensive Care Unit. The Plaintiff was discharged and good condition after control Lab and X-ray examinations for observation in the local clinic.
24. From what can be deduced from the medical report, there is no doubt that the Plaintiff suffered tremendous pain arising from the injuries she sustained following the collision. She had to sustained such excruciating pain, discomfort and stressful condition for not less than 3 hours before she could get to Seychelles Hospital to obtain appropriate medical attention in view of the serious injuries she sustained. She had to be transported from La Digue to Mahe to obtain medical attention.
25. At the time of the accident the Plaintiff was 16 years old and at the time she testified in Court in 2010 she was working as a Secretary. After the accident she was conscious and in severe pain when she was transported to La Digue

Hospital. Her situation was so serious that she had to be urgently flown by helicopter to Mahe. She was in the ICU for 15 days and on the Hermitte Ward for another 8 days. After her release she had to undertake physiotherapy everyday thereafter in Praslin. She was still in pain throughout her treatment. She cannot resume any of her sporting activities including her favourite sport of volley ball anymore. She missed school at the crucial time when she was going to sit for her S5 examination. She failed some subjects and that affected her mentally. She then came to Mahe to pursue her 'A' level studies. She could not travel from Plaisance to Anse Royale due to pain and discomfort and was sick everyday and in pain. She had to abandon her further studies and went back home to Praslin. She was still feeling pain in her back when she was testifying in Court.

26. Based on the evidence adduced before this Court, I am satisfied that the Plaintiff has indeed suffered pain and suffering. She had claimed SR300,000.00 for that. In my considered view it was on the high side when she entered her suit before this Court but with the passage of time and taking into consideration the lowering of the purchasing power of the rupee I would have to adjust whatever amount I would be awarding. The Plaintiff is now fully recovered and is employed fulltime as a Secretary. She has the use of all her limbs and faculties. She is not suffering from any serious residual permanent disability. I award the Plaintiff the sum of **SR150,000.00** under that head of claim.
27. The Plaintiff also claimed SR100,000.00 for loss of enjoyment of life. When the Plaintiff met with the accident she was only 16 years old. That was at the prime of her youth when she was enjoying life including sports which are always central in the life of a youth. She has now been deprived of such and that would probably be forever. It is my considered judgment that her claim under that head is justified but I am of the considered view, taking into consideration all the relevant factors, that the sum of SR100,000.00 is on the high side. I award the Plaintiff the sum of **SR60,000.00** for loss of enjoyment of life.
28. With regard to her claim for scar, I note that there was not visible scar on her face or other exposed part of her body. The scars are on the concealed part of her body which obviously may be embarrassing in her intimate relationship. As such I believe that the amount claim is on the high side. I will award the sum of **SR40,000.00** under that head of claim.
29. The Plaintiff also claim SR50,000.00 as moral damage, mental distress and

inconvenience. I find that indeed the Plaintiff when through a traumatic experience and must have indeed suffered morally and mentally in addition to considerable inconvenience because of this accident. It is my considered assessment that the amount claim is fair and reasonable. I award the Plaintiff **SR50,000.00** under that head of claim.

30. In the final analysis I enter judgment in favour of the Plaintiff as against the Defendant in the total sum of **SR300,000.00** with interest and costs.

Signed, dated and delivered at Ile du Port on 3 July 2014

B Renaud  
**Judge of the Supreme Court**