

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 211/2007

[2014] SCSC 23

**RADHA PILLAY
of Food World (Pty.) Ltd.
Trinity House, Victoria**

Plaintiff Versus

**NEVILLE LABALEINE
of Intendance, Mahé**

Defendant

Heard: 17 October 2011, 1 March 2013

Counsel: Ms. K. Domingue for plaintiff

Mr. W. Lucas for defendant

Delivered: 27 January 2014

JUDGMENT

Karunakaran J

[1] This is an action in delict. The plaintiff in this suit claims the sum of SR387, 271.80 with interest and costs, from the defendant for loss and

damages the plaintiff suffered as a result of a fault allegedly committed by the defendant. The defendant denies the entire claim in its entirety.

[2] According to the plaintiff, on the 29th September 2006, the defendant assaulted her in public for no apparent reason causing her pain, serious bodily injuries and loss. The particulars of the loss and damages are pleaded as follows:

| | |
|---|---------------|
| a. Hospital expenses | SR 21,202.43 |
| b. Airfares | SR 33,972.35 |
| c. Incidental/associated expenses | SR 32,378.02 |
| d. Moral damages for pain, suffering and injury | SR 300,000.00 |

Total SR 387,271.80

[3] On the other hand, the defendant, in his statement of defence has denied the plaintiff's claim, stating that he is not responsible for the bodily injuries and the consequent loss and damage suffered by the plaintiff in the alleged incident.

[4] The facts as they transpire from the evidence on record are these: The plaintiff was and is a 37 year old resident of Bel Air. She owns and runs a small eatery business at Trinity House in Victoria. At all material times, the defendant had been employed by the plaintiff as a pizza chef. On the 29th September 2006, the defendant was working the morning shift when he was asked by his employer, the plaintiff, to help move some supplies from the car to the shop. In response, the defendant asked her why she couldn't do it herself and she responded by telling him, if he couldn't do it, he should say so, and she would do it herself. Following the exchange of words, the plaintiff began moving the supplies on her own into the shop. As she was doing so, whilst she was inside the shop, she was suddenly struck by the defendant, with great force on the left

side of her face and she fell to the floor. The defendant also swore at and insulted the plaintiff using filthy and abusive language. After that he changed his work clothes and left the premises. The plaintiff, while barely conscious on the floor, noticed that there was profuse bleeding from both the inside and outside of her left cheek, with rapid swelling and reduced vision in her left eye. Another worker who was on duty at the time immediately called the plaintiff's husband. As the plaintiff was helped to get up, she was unable to support or lift her head straight up.

[5] Later, the plaintiff consulted her lawyer, Mr. Bernard Georges, who noted that it was a severe blow, and indicated that she ought to report the matter to the police. Accompanied by her husband, she did so, and also reported to a local clinic where she was prescribed the usual antibiotics and pain killers. She was also given an appointment for an x-ray, which showed fractures of the left zygomatic and maxillary bones, a prolapse of soft tissue into the left sinus, as well as opacification due to hemorrhage, vide Exhibit P1. Over time, the plaintiff's condition became worse as she was not able to open her mouth properly, or chew her food, due to the injuries sustained and the resulting complications. The pain and swelling was increasing and she was not able to see through her left eye. The plaintiff was unable to sleep, work or tend to her children. The plaintiff was subsequently taken to a private doctor, one Dr. Todorovic, who recommended that she go overseas as she needed better diagnosis and specialized surgery and treatment which were not available locally.

[6] The plaintiff, after having made arrangements for her business and care of her children, accordingly proceeded to Apollo Hospitals, in Chennai, India where she was admitted. There, the consultant oral and maxillofacial surgeon too diagnosed that the plaintiff had suffered multiple fractures and some complications which if left untreated, could cause permanent loss of vision in the left eye as well as disability and

deformity of the face. Two weeks after being admitted, the surgeon then performed the necessary corrective surgeries and reconstructed the damaged part of the face with a 4-hole titanium plate, a 6-hole titanium plate and a titanium mesh placed beneath the globe of the eye, secured with titanium screws, vide Exhibit P2. The plaintiff was further advised not to engage in intense physical activity, sleep on the left side, and blow the nose with force, over a period of two weeks.

- [7] During the period of her treatment, follow up and recovery, which lasted around 3 months, the plaintiff had to arrange for accommodation in a guest house in the vicinity of the hospital, which added to the expenses besides medical ones. The plaintiff further testified that due to her continued absence from Seychelles, there arose marital problems that culminated in the divorce of her husband. This, coupled with the fact of her absence adversely affected the well-being and education of her children.
- [8] Following the said untoward incident, the plaintiff terminated the defendant's employment, who in turn instituted a grievance procedure before the competent officer of the Ministry of Employment, challenging the said termination and seeking his terminal benefits. The competent officer having reviewed the case found that the defendant had committed a serious disciplinary offence whereby he assaulted and inflicted bodily injuries upon his employer. Accordingly, he upheld the termination of the defendant's employment by the plaintiff, while also finding that he was entitled to accrued leave and unpaid salary, vide Exhibit P4.
- [9] The plaintiff further testified that the medical, travel, and other incidental expenses incurred amounted to around SR88, 000. She further estimated her moral damages for pain, suffering, hardship, and inconvenience, at SR300, 000. In the circumstances, the plaintiff seeks

this court to give a judgment in her favour in the sum of SR 387,271.80 with interest and cost.

[10] On the other side, the defendant testified that he did not assault or inflict any injury on the plaintiff. He admitted to the events leading up to the argument between the parties over carrying some boxes or bags, from the car to the shop. However, according to the defendant, the plaintiff, while snatching a bag from him, might have fallen down and sustained those facial injuries. In the same breath, he admitted that he did not see her fall down but only saw her crying on the floor. But he did not help her in any way though he saw her lying on the floor, since she had apparently asked him to leave while on the floor.

[11] The defendant also made a second hypothesis that the plaintiff could have hit a table when she fell down and sustained those injuries. In the circumstances, the defendant contended that he was not responsible for the injuries the plaintiff suffered and therefore not liable in law, to pay any compensation to the plaintiff.

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

- a. Did the defendant unlawfully inflict the alleged injuries to the plaintiff?*
- b. If so, did the plaintiff suffer loss and damages as a result of those injuries?*
- c. Is the quantum claimed by the plaintiff for moral damages exaggerated?*

d. Is the defendant liable to compensate the plaintiff for the damages suffered?

[13] The plaintiff's action is in essence 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"

[14] In answering the first question, which is a question of fact, I would like to note that I had the opportunity to observe the demeanor and deportment of the witnesses, while they deposed in court. Firstly, on the question of credibility, I believe the plaintiff in every aspect of her testimony. She appeared to be a truthful witness, with her version further corroborated by the documents adduced as evidence, and the finding of the competent officer, vide Exhibit P4, who concluded that the defendant had committed a disciplinary offence under the Employment Act, in that, the defendant assaulted and inflicted bodily injury upon his employer, i.e. the plaintiff. The defendant's testimony, on the other hand, was mostly guesswork and speculation where it related to the incident. Where his testimony related to other incidental aspects and other material facts, his testimony was even more inconsistent and self-contradictory. I do not believe the defendant in any aspect of his testimony, and reject his testimony in toto. I believe the plaintiff in her

material evidence as to how, and under what circumstances the plaintiff sustained her injuries. Her evidence in this respect is cogent, consistent, credible and corroborative. In these circumstances, I find it was the defendant who unlawfully inflicted the injuries to the plaintiff at the material time and place.

[15] As regards the second question, it is evident that the plaintiff sustained injuries in her left cheek resulting in fractures of the left zygomatic and maxillary bones, a prolapse of soft tissue into the left sinus, as well as opacification due to hemorrhage, vide Exhibit P1. The injuries sustained were quite serious and hence required specialized diagnosis and treatment. The losses as pleaded by the plaintiff in her plaint have been particularized as hospital expenses, airfares and incidental/associated expenses, vide Exhibits P2 and P3. I find that all the documents adduced by the plaintiff, in respect of overseas medical expenses and overseas travel expenses, are genuine and the amounts claimed therein are reasonable having regard to all the circumstances of the case. The incidental and associated expenses claimed are also reasonable given the nature and length of the treatment overseas.

[16] Regarding the quantum claimed by the plaintiff for moral damages, I note that this incident has not only caused permanent impairment due to reconstructive surgery on her face, but also much pain and suffering before, during and after treatment. Furthermore, the plaintiff's modesty as a woman was affected in public, and her marital life was thrown into disarray. It also caused much anguish and separation from her children over the period of her overseas treatment. I gave diligent thought to the contention of the defence counsel that quantum of damages claimed by the plaintiff is grossly exaggerated and disproportionate to the injury. As this Court held in the case of **Lee v Zheng Case No: 54 of 2002** that when a woman is subjected to a physical assault in public, the modesty of her womanhood is wounded, and not just physically. Hence, the

degree of humiliation is higher than that of a man, who is subjected to such assault under similar circumstances. The modern woman, is observably, more susceptible to emotional disturbances, and in that sense more frail, than her counterpart. Hence, in my considered view, the Court should also take into account the frailty and modesty of womanhood as a relevant factor amongst others, whilst making proper assessment of moral damages awardable to any member of the weaker sex, especially in cases of this nature. Having said that, I find the plaintiff's claim in the sum of SR 300,000, is not exaggerated in the least, which sum in my view, is reasonable, appropriate and proportionate to the injuries she suffered affecting her modesty, mind, cosmetic loss and body.

[17] Needless to say, the defendant is therefore liable to make good the loss and damages suffered by the plaintiff in this matter.

[18] In the final analysis, I hold that the defendant is liable in delict to compensate the plaintiff, for the loss and damages caused to the plaintiff as a result of the injuries sustained. Having considered all the above, I award plaintiff the following sums:

| | |
|---|---------------|
| a. Hospital expenses | SR 21,202.43 |
| b. Airfares | SR 33,972.35 |
| c. Incidental/associated expenses | SR 32,378.02 |
| d. Moral damages for pain, suffering and injury | SR 300,000.00 |

Total SR 387,271.80

[19] Therefore, I enter judgment for the plaintiff and against the defendant in the sum of **SR 387,271.80/-** with costs. I make no orders as to interest.

Signed, dated and delivered at Ile du Port on 27 January 2014

D Karunakaran
Judge of the Supreme Court