IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 248/2010

[2015] SCSC 126

JAD ENTERPRISE

Plaintiff

versus

STAR (SEYCHELLES) LIMITED

Defendant

Heard: 31st October 2012, 23rd October 2013,

Counsel: Mr. B. Georges for plaintiff

Mr. F. Ally for defendant

Delivered: 6th May 2015

JUDGMENT

D. Karunakaran, Acting Chief Justice

[1] The plaintiff has brought this action against the defendant claiming loss and damages in the sum of Rs 540,550/- resulting from a motor vehicle accident, occurred on the 5th May 2010, at Providence, Mahé.

[2] At all material times, the plaintiff-company was the owner of a pickup registration number S 633 and the defendant-company was the owner of a garbage truck registration number S13051. On the 5th May 2010at around 9 am, one Mr. Steve Albert Morel - DW1

- an employee of defendant was driving the defendant's truck near the garbage dumping-site at Providence. According to the plaintiff, while the defendant's truck was making reverse the rear part of the truck collided with the front part of the plaintiff's pick-up, which had been driven behind at the material time, by one Mr. Jeffrey Delorie - PW1 - an employee of the plaintiff.PW1 testified in essence, that that plaintiff had a contract of service with Banyan Tree Resorts to collect the garbage every day from the Resort and transport the same to the dumping site at Providence. On the day in question, at around 8.50 am, he was driving his pickup loaded with garbage going towards the dumping area. The defendant's garbage truck was also going in the same direction towards the dumping area in front of him at a distance of about 6 to 8 meters. The defendant's truck suddenly stopped and started moving backward in the direction of the plaintiff's pickup, without any warning to the road users behind. PW1 having been shocked by the reverse motion of the truck in front, stopped his pickup and hooted to draw the attention of the truck-driver but in vain. In a couple of seconds, the rear part of the heavy truck crushed the front part of the plaintiff's pickup and caused extensive damage to the pickup's front cab. The backward motion of the truck was also accelerated due to sloping terrain of the road at that particular spot where the collision occurred.PW2, one Mr. Jude Delorie, a passenger in the pickup at the relevant time, sitting in front next to PW1, testified that he also observed the sudden reverse motion of the defendant's truck in front, which came towards the pickup, collided and crushed the front part of the pickup. PW3, one Randolph Joliecoeur, a motor vehicle mechanic, who visited the scene soon after the accident also testified that corroborating the evidence of PW1 and PW2 in that, the collision had occurred due to sudden reverse motion of the truck and the pickup had sustained an extensive damage to the front cab. According to the mechanic, the front part of the pickup, the cab was completely crushed as the heavy truck had been reversed into it with great force. The cab was damaged beyond economic repairs and so he had to replace the damaged cab by a new one. It took about two months to get a new one as it was not locally available. Eventually, he got one and replaced it at the cost Rs90, 550/- In the circumstances, the plaintiff claims that the collision occurred solely due to the negligent operation of the defendant's vehicle at the material time, which resulted in loss and damage to the plaintiff as follows:

(a) The cost of the front cabin damaged beyond repairs Rs 90,550/-

(b) Loss of use of the pickup for 90 days at the rate of Rs5, 000/- per day i.e Rs 450,000/-

[3] Hence, the plaintiff seeks judgment in its favour in the total sum of Rs 540,550/- with interest and costs against the defendant.

[4] On the other side, the defendant claims that the accident occurred solely due to the negligent operation of the plaintiff's vehicle at the material time and place. The driver of the defendant's truck testified in essence that although he saw the pickup behind he did make the reverse of his truck as the pickup was seen behind nearly 20 to 30 meters away from him. However, only when he heard the noise, he suddenly realised that the pickup had come closer to the truck, collided and sustained the damage including a slight damage to the truck. Therefore, the defendant denied liability for the accident and consequential damage to the pickup.

[5] I carefully perused the entire evidence 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"*

[6] 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***-the Court held that

when a motor vehicle was involved in an accident with another motor vehicle, 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 their respective vehicles; the presumption of law under Article 1382(2) arises 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?

[7] I diligently analyzed the entire evidence on record. Firstly, having observed the demeanour and deportment of the witnesses for the plaintiff, I conclude that all of them are credible witnesses. I believe them in every aspects of their testimonies particularly, the version of PW1 and 2 as to how, why and the manner in and the circumstances under which the accident occurred. Their evidence as to the cause of the accident is very cogent, reliable and consistent in all material particulars. Above all, the version of PW1 that the collision occurred as the defendant's vehicle was suddenly reversed on the slopping road in front of him, is corroborated by the testimony of the other eye-witness, the passenger. If the driver of the truck before making reverse had acted prudently by checking the road behind for the oncoming traffic, the accident could have been averted.

[8] After taking the entire circumstances into account, I am sure and find that the defendant's driver drove his truck negligently at the material time and place. He made a wrong judgment at the time of reversing his truck, that the plaintiff's pick-up behind was far away from his truck. He did not check the road behind to ensure that the road behind was safe and there was no immediate traffic on the road, while he was reversing his truck. To my mind, he has ventured a high risk as an imprudent driver and has blindly reversed his truck on the road and so I find. I do not believe the defendant in his testimony that the plaintiff's car was driven negligently on 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 negligent operation of the defendant's truck S13051, 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.

[9] Coming back to the plaintiff's claim for damages, although the quantum claimed for the replacement of the cabis reasonable and appropriate, the quantum claimed for loss of use in the sum of Rs 450,000/- , appears to be highly exaggerated and unreasonable. Having regard to all the circumstances of the case, in my considered view, the claim for loss of use should be reduced to Rs 18,000/- which sum would be reasonable and appropriate In the final analysis, therefore, I award the following sums to the plaintiff:

(a)For the cost of replacement of the front cabin damaged beyond repairs Rs 90,550/-

(b)Loss of use @ Rs300/- per day for two months Rs 18,000/-

Total Rs 108,550. 00

[10] Wherefore, I enter judgment for the plaintiff and against the defendant in the total sum of ***Rs 108,550. 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.

Signed, dated and delivered at Ile du Port on 6 May 2015

D Karunakaran
Acting Chief Justice