

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 03/2014

[2015] SCSC 173

JEAN-YVES LOW TOY

Plaintiff

versus

JEAN-MARC MANIKON

First Defendant

ISLAND TIME CAR RENTAL

Second Defendant

Heard: 22 May 2015

Counsel: Ms. Pool for plaintiff

Mr. Elizabeth for first defendant

Mr. Rouillon for the second defendant

Delivered: 22 May 2015

JUDGMENT

D. Karunakaran, Acting Chief Justice

- [1] I believe I need not adjourn this matter for another date to deliver judgment. I will proceed to deliver an ex-tempore judgment. For, the facts are simple and clear on record. The case does not involve any questions of law.
- [2] This is an action in delict. The plaintiff is now 18 year old young man. He is claiming a total sum of Rs.1,000,350/- from both defendants jointly and severally with interest and costs. According to the plaintiff he suffered bodily injuries as a result of the negligent operation of a motor vehicle by the first defendant and owned by the second defendant. In a nutshell the undisputed facts of the case are these:-
- (i) At all relevant times the plaintiff was the rider of a motor cycle S18956 and the first defendant was the driver of a hired motor vehicle registration number S2454 belonging to the second defendant, which is a car hire company.
 - (ii) On 28th April 2013 in the morning the plaintiff was riding his motor cycle S18956 at Anse Royale, travelling from Takamaka towards Victoria. He was struck and thrown onto the ground by an oncoming motor vehicle S2454, driven by the defendant at the material time, on the public road at Anse Royale opposite the Petrol Station.
- [3] The case of the plaintiff is that at the time of the accident the said motor vehicle was driven by the first defendant negligently and it was as a result of its negligent operation by the defendant the accident occurred. The plaintiff testified that while he was riding his motor-cycle on his lane of the road opposite the Petrol Station at Anse Royale going towards north, the defendant's vehicle which was driven at the material time from the north to the south, crossed the road in front of him and turned towards the Petrol Station on the mountain side of the road. As a result of the negligent operation of the vehicle by the first defendant, the plaintiff claimed that the accident occurred. Moreover, it is the evidence of the plaintiff that the first plaintiff failed to take precaution before he suddenly turned his car towards the Petrol Station, crossing his lane of the road.
- [4] In these circumstances of this case, the plaintiff claimed that the defendant was reckless and as a result of this accident he suffered injuries to his right hip. Moreover, the plaintiff claimed that his right hip was dislocated; there was fracture of the anterior

column of the right acetabulum with fragment dislocation. Furthermore, he claimed that there was deformity of the right hip and the limitation on range of movement and tenderness and inability to move his right foot. As a result, he claimed that he is suffering from partial, permanent disability to his right hip.

- [5] Therefore, the plaintiff claims that he suffered pain and suffering estimated in the sum of Rs.500,000/-. Also he suffered loss of enjoyment of life for which he claims Rs.200,000/-. In addition he claims Rs.200,000/- for disability. Moreover, he claims Rs.350/- for medical report and moral damages in the sum of Rs.100,000/-. Consequently the plaintiff claims the total sum of Rs.1,000,350/- from both defendants jointly and severally.
- [6] Doctor Ribail Babie Reyes who treated the plaintiff after the accident as well as who examined the plaintiff last year, that was on the 11th of August 2014, testified that as a result of the injury suffered from this accident the plaintiff's right hip has lost its full functioning. According to the doctor nearly 70% of its normal functioning has been lost and the plaintiff is still suffering from residual injury to his right hip. The doctor further testified that if the plaintiff continues his physiotherapy there could be some improvement. However, the injury sustained cannot be completely cured and he will never come back to normal life in his lifetime. Also, the plaintiff produced the medical report from other two surgeons, Dr. Ben Warmamili and Dr. Rodriguez, who are working for the Ministry of Health.
- [7] On the other side both counsel for the defendants submitted that the claim in the sum of Rs.1,000,350/- made by the plaintiff against the defendants is highly exaggerated, exorbitant and unreasonable having regard to all the circumstances of the case.
- [8] I carefully perused the evidence adduced by the plaintiff in this matter. I meticulously perused the medical reports submitted by Dr. Ribail, Dr. Warmamili and Dr. Rodriguez. First of all, on the question of liability, on the face of the evidence, including the records produced by the Registrar from the Magistrate Court, I find that the first defendant was convicted for the offence of negligent driving involving the same incident. He was sentenced to pay a fine of Rs.3500/-. Also I note, the presumption of law under Article 1383 (2) of the Civil Code is activated against the first defendant, who was in charge and

in operation of the vehicle in question. On the basis of the entire evidence on record I am satisfied that;-

- (i) the first defendant is liable for the accident as he was driving his motor vehicle negligently at the material time;
- (ii) the second defendant being the owner of the vehicle at the material time is equally and vicariously liable to compensate the plaintiff for the actual loss and damage the latter suffered.

[9] However on the quantum of damages, I agree with the submissions of both defence counsel that the claim is highly exaggerated, exorbitant and unreasonable.

[10] Having taken into account the entire circumstances of this case, I find both defendants are jointly and severely liable to pay for the actual loss and damage the plaintiff suffered in this matter. Taking into account the entire claim made by the plaintiff in this case, I award the following sums in favour of the plaintiff;-

(a) For pain and suffering, I award the sum of Rs.50,000/-;

(b) For loss of enjoyment of life, past and future, I award Rs.50,000/-;

(c) For partial permanent disability to the right hip, I award Rs.100,000/-

(d) For cost of the medical report, I award Rs.350/-

(e) For moral damages, I award the sum Rs.20,000/-

[11] In total I award the sum Rs.220,350/- in favour of the plaintiff with interest on the said sum at 4%, (the legal rate) as from the date of the plaint and with costs of this action.

[12] Judgment entered accordingly.

Signed, dated and delivered at Ile du Port on 22 May 2015

D Karunakaran
Acting Chief Justice