

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CA18/2013**

**Appeal from Magistrates Court Decision 118/2012**

**[2016] SCSC 112**

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**MARLENE YOUNG**

Appellant

versus

**YANNICK ROSE**

Respondent

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Heard:

Counsel: Mr. Camille for appellant

Mr. Gabrielle for respondent

Delivered: 26 February 2016

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**JUDGMENT**

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Renaud J

**[1]** The Respondent was 5 years old at the material time and was playing on the beach at Anse Parnelle, Mahe, when he was beaten by a dog allegedly belonging to the Appellant. The Respondent received injuries over his body. The mother of the Respondent sued the Appellant claiming SR150,650.00 damages on behalf of her son. The Learned Senior Magistrate after hearing the case found that the dog who bit the Respondent belonged to

the Appellant and therefore the Appellant was liable to the Respondent and awarded damages in the sum of SR70,000.00 with interest and costs against the Appellant.

- [2] The Appellant being aggrieved by the decision of the Learned Senior Magistrate delivered on 14th May, 2013 in case CS No.118/12, is appealing against the whole of that decision on the following grounds:

**Ground 1**

The findings of the Honourable Magistrate are against the weight of the evidence in the case.

**Ground 2**

The sum awarded is high and excessive in all the circumstances of the case.

- [3] The issues that arose out of the pleadings concerning liability are, in my view, properly set out at page 4 of the judgment of the Learned Senior Magistrate, (hereinafter “the Magistrate”) as follows:

Did the dog belong to the Defendant (now Appellant)?

Was the assault caused by the ‘faute’ of the Defendant (now Appellant)?

**Ground 1**

- [4] Learned Counsel for the Appellant submitted that there was no direct or circumstantial evidence to show that the dog belonged to the Appellant. The Appellant denied all the averments of the Respondent in the Plaint. He also argued that the Respondent could have possibly been bitten by a stray dog.
- [5] With regard to the allegation that it was a dog named “Roxy” that bit the Respondent, Learned Counsel submitted that it was simple guess work and speculation.
- [6] Learned Counsel for the Respondent submitted that the Respondent was bitten by the dog named “Roxy” and that the latter indeed belonged to the Appellant. He asserted that that

fact was supported by ample evidence by the testimonies of the witnesses of the Respondent.

[7] I meticulously reviewed all the evidence on record in relation to the analysis of such evidence by the Magistrate in her judgment that led her to reach the conclusions and findings she made. I bear in mind that the Magistrate had the benefit of observing at first hand the demeanor of the Appellant and the Respondent as well as their witnesses. I have no reason to disturb those findings and conclusions that it was the dog named “Roxy” that bit the Respondent and that the said “Roxy” was a dog that belonged to the Appellant.

[8] I find no merit in the 1st ground of appeal.

## **Ground 2**

[9] On the issue of quantum, Learned Counsel for the Appellant submitted that the damages claimed by the Respondent are exorbitant and not supported by the medical evidence. He added that the Medical Report is contrary to what the judgment stated. He also submitted that in past judgments of similar nature had awarded damages of lesser amounts regardless of whether the victim was a child or an adult.

[10] Learned Counsel did not, however, make available to this Court copy of such judgments that he referred to.

[11] On the other hand Learned Counsel for the Respondent submitted that the Magistrate had a full appreciation of the injuries sustained by the Respondent. The Appellant did not contest the quantum when leading evidence in her defence in the Court below. The Appellant is now stopped from claiming that which she had in the first instance not contended.

[12] From her judgment it is obvious that the Magistrate was influenced by the photographs of the wounds of the Respondent who was only 5 years old at the time together with the medical report and she concluded that the injuries were relatively serious.

- [13] The Magistrate reckoned that the sum claimed by the Respondent seemed inflated despite the trauma the young boy felt and also the fact that he had to absent school. The young boy had continued pain and discomfort arising out of that incident. The Magistrate concluded that the global sum of SR70,000.00 was adequate.
- [14] The Magistrate however did not consider that it was not the Appellant who personally and deliberately inflicted or caused the infliction of the wounds suffered by the Respondent. At its highest, the Appellant was only vicariously bearing responsibility for the action of an animal that had, prior to that incident, not bitten any person in the same circumstances. It was the first time that the dog did that. The Appellant also showed an element of remorse and assisted the Respondent to receive medical treatment immediately. The scars on the Respondent are not aesthetically such that in any way defaced the Respondent, as these are not exposed. The injuries suffered by the Respondent were eventually properly healed and did not leave the Respondent with any residual disability.
- [15] It is my considered judgment that taking into consideration the factors stated above, and that such factors were not considered by the Magistrate when she awarded the Respondent the sum of SR70,000.00 in damages. This sum now ought to be reviewed and accordingly reduced. I reduced that sum to SR40,000.00.
- [16] To that extent this ground of appeal is allowed.
- [17] In the final analysis this appeal is allowed to the extent that the Appellant shall pay the Respondent the global sum of SR40,000.00 as damages with interest at the legal rate. I so order.
- [18] I also award costs both in this Court and the Court below to the Respondent.

Signed, dated and delivered at Ile du Port on 26 February 2016

B Renaud  
Judge of the Supreme Court