

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CS24/2014**

**[2016] SCSC 479**

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Doris Solo

Plaintiff

versus

Louciana Payet

Defendant

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Heard: 8 October 2015, 17 May 2016, 15 June 2016

Counsel: France Bonte for plaintiff

Elvis Chetty for defendant

Delivered: 8 July 2016.

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**JUDGMENT**

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**M. TWOMEY, CJ**

[1] The Plaintiff and Defendant were involved in an incident at Ile Perseverance in which the Plaintiff alleged she was unlawfully assaulted by the Defendant and suffered a fracture to her middle finger.

[2] The Defendant pleaded guilty on 4<sup>th</sup> February 2014 to the charge of grievous harm before the magistrate court.

- [3] The Plaintiff averred in her Complaint filed in March 2014, that the acts of the Defendant amounted to a fault in law and claimed the sum of SR500,000 comprising of SR200,000 for injuries, SR100,000 for pain and suffering, SR100,000 for trespass to the person and SR100,000 for moral damage.
- [4] The defendant in her statement of defence denied assaulting the Plaintiff but stated that she had pushed the Plaintiff away to defend her husband, Nigel Payet, who was being attacked by the Plaintiff and her husband's son Selby Payet. She denied causing injury resulting in loss and damage to the plaintiff.
- [5] At the hearing of the Complaint, the Plaintiff testified that on 30th April at 6.30 at her residence in Perseverance, the Defendant used abusive language which resulted in a fracas between her husband and the Defendant's husband. She intervened to defend her husband and in the process she was hit by the Defendant, kicked to get away and fell off balance onto the stairs.
- [6] She suffered physical pain and had to take leave from work to recover. She couldn't use her hand or take care of her daughter and had to send her to her grandmother's house. This caused a lot of stress and emotional injury. She also felt that her integrity and reputation in the neighbourhood was affected and she was dragged into the courts which was not something she had wanted.
- [7] She further testified that she still had pain in her finger especially when the weather was cold and that her hand was disfigured. She used to go to the spa to have manicures but she is not able to anymore as it attracts attention to her hand. Her sleeping pattern was also affected because of the incident.
- [8] The Assistant Registrar of the Supreme Court, Sumita André produced the criminal file in relation to the proceedings in the Magistrate Court in which the Defendant had pleaded guilty to grievous harm to the Plaintiff and had been convicted of grievous harm and sentenced to six months imprisonment suspended for two years and the payment of a fine of SR5,000 sum in respect of the offence.
- [9] Dr. Jawula Manoo of the Ministry of Health and the Department of Orthopaedics treated the Plaintiff for her injuries which consisted of a fractured middle phalange of her right

finger. The finger was splinted for two weeks and reviewed. As the finger then became stiff the Plaintiff was referred to the occupational therapist for treatment. In cross examination he stated that some deformity in the form of a slight curvature to the finger had occurred.

**[10]** The Defendant also testified. She stated that she had gone with her husband to collect items of furniture left at the Plaintiff's house. The Plaintiff had verbally abused her and she had retreated down the stairs but then heard the Plaintiff asking her husband to let go of Nigel Payet. She went back up to stop the fight but was hit by the Plaintiff. In the process of defending herself, the Plaintiff fell and injured herself.

**[11]** In closing submissions Mr. Chetty for the Defendant asked that the court take into account the fact that the Defendant had acted in self-defence after being provoked and that the Plaintiff had admitted losing her balance and falling. He submitted that there was therefore an element of contributory negligence on the part of the Defendant. Further, he submitted that quantum claimed was excessive and that the maximum that should be granted was SR20, 000.

**[12]** Mr. Bonté for the Plaintiff submitted that the claim had been supported by evidence and that the Defendant's account of self-defence did not correspond with her guilty plea in the Magistrates Court. He also submitted that the quantum of damages as claimed was appropriate given the fact that the Plaintiff had not recovered full use of the finger.

**[13]** The Plaintiff relied for proof of her case largely on a decision of a Court of criminal jurisdiction. Article 1351 of the Civil Code of Seychelles provides in relevant part:

*3. The admissibility and effect of judgments given by a Court of criminal jurisdiction shall, in civil matters be governed by and decided in accordance with the principles of English law.*

**[14]** The applicable English law on this issue was explored by Perera J (as he then was) in *Saunders and Or v Loizeau* (1992) SLR 214. The rule against the inadmissibility of such evidence to prove a civil case was contained in *Hollington v Hewthorn* (1943) KB 587. The rule however was abrogated by section 11(1) the English Civil Evidence Act of 1968 which made admissible a conviction for proving that a defendant in a civil action

committed the act for which he was convicted. The Act was adopted in the jurisprudence of Seychelles by virtue of the fact that applicable English law in Seychelles in terms of evidence is that in force when Seychelles became independent on 1<sup>st</sup> January 1976 (See *Kimkoon and Co v R* (1965) SCAR 64, *Vel v Tirant and or* (1978) SLR 9, *Bouchereau v Francois and ors* (1980) SLR 77).

**[15]** The Seychellois Evidence Act by amendment in 1990 imported this statutory provision of the English Civil Evidence Act 1968 into our laws. Section 29 of our Evidence Act provides in relevant part:

*(1) In a trial the fact that a person, other than, in the case of a criminal trial, the accused, has been convicted of an offence by or before any court in the Republic shall be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in the trial, that that person committed the offence or otherwise, whether or not any other evidence of his having committed that offence is given.*

*(2) In a trial, other than in a civil trial for defamation, in which by virtue of this section a person, other than, in the case of criminal trial, the accused, is proved to have been convicted of an offence by or before a court in the Republic, he shall be taken to have committed that offence unless the contrary is proved.*

...

*5) Where evidence that a person has been convicted of an offence is admissible under this section, then without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based*

*(a) the contents of any document which is admissible as evidence of the conviction; and*

*(b) the contents of the information, complaint or charge sheet on which the person was convicted,*

*shall be admissible in evidence for that purpose.”*

**[16]** The effect of this statutory provision is that the contents of the file of proceedings of the criminal trial before the magistrate court proves that the Defendant committed the offence

of grievous harm on the Plaintiff. Section 29(2) shifts the legal burden onto the Defendant to show on a balance of probabilities she has not committed the offence.

**[17]** The evidence brought by the Defendant in no way satisfies this burden. In this respect the submission of Mr. Chetty for the Defendant as regards contributory negligence on the part of the Plaintiff is rejected. I therefore find pursuant to article 1382 of the Civil Code that the Defendant is liable for the delict on the Defendant.

**[18]** In terms of the quantum for damagers I accept Mr. Chetty's submission that the amount claimed is exorbitant. However no comparative authority was brought to support this submission. This is unfortunate and not a practice the Court wishes to encourage as it cannot of its own pluck figures from the sky.

**[19]** I accept the Plaintiff's evidence that there is permanent disfigurement and some reduced use of the middle finger of her right hand. I also accept the cosmetic and aesthetic damage to her hand. I also accept the evidence with regard to pain, suffering and emotional stress. In the absence of any supporting authorities any award will therefore be subjective and arbitrary.

**[20]** In *Denis v Ryland* [2016] SCSC 10, I alluded to this dilemma especially where there is no statutory yardstick and where there is jurisprudential divergence in awards for moral damages. I said then and I reiterate now that it appears that each case is judged on its own merits. In the absence of any statutory guidance or evidence from the parties awards will continue to be arbitrary.

**[21]** Article 1149(2) of the Civil Code provides for the recovery for injury to rights that cannot be measured such pain, suffering and aesthetic loss. In *Servina v Richmond* SC CS 342/2004 a sum of SR10, 000 was awarded for pain, suffering and moral damage for injury awarded in respect of laceration to the right arm. Similarly in *Dufrene v Bacco* SC CS 109/2003 an award of SR 20, 000 was made in respect of lacerations to the palm of the hand plaintiff and another SR8, 000 for the permanent scar. In the case of *Denis* (supra) I awarded SR 30,000 for humiliation, distress and mental anguish.

**[22]** I bear in mind the time elapsed since the authorities cited above. I believe that the moral damages in this case must be on par with the award I gave in *Denis* although not as

serious as *Denis* was a case of assault by a police officer and injury, followed by the unlawful detention of the Plaintiff. I therefore make the following award: for the physical injuries suffered by the Plaintiff including the permanent disfigurement to her finger I award the sum of SR20, 000; for pain suffering, and trespass to the person (which all constitute moral damage) I award SR10,000.

[23] Together with costs.

Signed, dated and delivered at Ile du Port on

**M. TWOMEY**  
Chief Justice