IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS90/2003

[2016] SCSC624

AUBREY DIDON

Plaintiff

versus

ROUCOU CONSTRUCTON CO. (PTY) LTD
(Rep. by its Director Mr. Cyril Roucou)

First Defendant**PUBLIC UTILITIES CORPORATION**
(Rep. by its Managing Director Mr. Mukesh Valabhji)
Second Defendant

MINISTRY OF EMPLOYMENT & SOCIAL AFFAIRS
Third Defendant

MINISTRY OF LOCAL GOVERNMENT YOUTH & SPORT
Fourth Defendant

Heard: 20 June 2013, 25 February 2016, 26 February 2016

Counsel: Mr. F. Elizabeth for Plaintiff

Mr. C. Lucas for 1st Defendant
Mr. S Rajasundaram for 2nd Defendant
Mr. Jayaraj for 3rd & 4th Defendants

Delivered: 5 September 2016

JUDGMENT

Karunakaran J

[1] I will begin the judgmentby unfolding a disturbing story of an inordinate judicial delay occurred in this case, which I believe, needs to be told to set the record straight. Some of you may not want to hear the story and some would like to forget or ignore it, nevertheless it must be told in everybody's interest to unravel the mystery behind judicial delays.

[2] One upon a time, if I may say so,the plaintiff in this action in delict,came before the Court for justice, while he was in his teens, who is now in his 30s. If one needs to be more specific,by a plaint dated 27th March 2003 he commenced the instant suit claiming the total sum of Rs1,001,400 - 00/- originally from both defendants No:1 and No:2 above, jointly and severally for loss and damage, which the plaintiff suffered as a result of a fault, allegedly committed by both defendants. The said loss and damageis claimed for the bodily injuries, whichthe plaintiff sustained through a high-voltage electricshock,when he unknowingly came in contact with ahigh-tension exposed-electric-live-wire on a construction site. The 1st defendant, a building contractor, had allegedly employed the plaintiff as an apprentice/workerinone of its construction sitesat St. Louis and the 2nd Defendant(PUC) had allegedly kept or had installed the said high-tension exposed - live – electricwires above the construction site.The fault alleged emanated from the negligent acts/omissions on the part of the 1st defendant, in that, he failed to provide a safe place and system of work; and failed to provide a proper and adequate supervision, safe equipment, clothing and footwear to the plaintiff in the course of the employment. And the 2nd Defendantwas also joined as itallegedly, committed a fault in that, it failed to give adequate and proper warning to the Plaintiff and the public at large of the dangers posed by the exposed - live - electric wires; and also failed to ensure that the said live electric-wire, whichit had installed was safe and did not pose danger, to the health, safety, security and life of the plaintiff and others.

[3] During the stage of exchange of pleadings, at the instance of a motion dated 16th February 2004,filed by Mr. Lucas, learned counsel for the 1st defendant,the court almost one year after the commencement of the suit added the 3rd defendant namely, the MINISTRY OF EMPLOYMENT & SOCIAL AFFAIRS and the 4th Defendant namely, the MINISTRY OF LOCAL GOVERNMENT YOUTH AND SPORT, as co-defendants in the proceedings presumably by my predecessor, who was handling the case initially.In 2003,

Learned State Counsel Mrs. Govinden (as then she was) (now Judge) put up appearance for the 2nd defendant and filed a defence and then disappeared from the proceedings. Subsequently, another State CounselMr. Elvis Chetty put up appearance for the 2nd, 3rd and 4th defendants, filed another defence with a plea in limine,dated 20th February 2007 and then disappeared. Again another State Counsel,Mrs. F. Laporte (as then she was) (now Judge Mrs. Robinson) came into the picture,put up appearance for the2nd, 3rd and 4th defendants and filed another defence dated 28th March 2007 with a plea in limine and then, also disappearedat a stage when the case had been set for continuation of hearing. Finally, Learned State Counsel Mr. Jayaraj came into the picture on the 24th June 2011, put up appearance for the 2nd, 3rd and 4th defendants replacing Counsel Mrs. F. Laporte,and sought an adjournment as the case had then been set for continuation of hearing. The record of proceedings on that day is very revealing and informative as it shows the tip of the iceberg as to what factors and circumstances beyond control,by and large contribute for judicial delays,at time inordinate delays and why the Courtsinevitably grant adjournments, which is seen to be the main source of judicial delays.For transparency and clarity, I would like to reproduce the saidrecord of proceedings of that particular day, which readsin verbatim thus:

Mr. Elizabeth for the Plaintiff

Mr. C. Lucas for the 1st Defendant

Mr. Chinnasamy for the 2nd,3rdand 4thDefendants

Court: Can you just refresh my memory, what is the case about?

Mr. Elizabeth: My Lord, this case is about an incident which happened at St. Louis whereby my client was working for Roucou construction and he fell off afterhe was hit by electricity wire and he fell off the roof of the building and sufferednumerous injuries.

Mr. Lucas: My Lord, and the plaintiff was on work attachments, and he was fullycovered by insurance of the school.

Court: Mr. Chinnasamy?

Mr. Chinnasamy: My Lord, I am for the second defendant PUC but now twoministries have been added as third and fourth defendant in this matter in additionto PUC. I am not in a position to proceed with the matter because it is a very old case that has been allocated to me. I submit that I also want to see the proceedings as tohow many witnesses the plaintiff has called so far.

Court: Who was conducting the defence before?

Mr. Chinnasamy: Before there were three, four lawyers from 2003 onwards. Ihave to make a proper appearance before your Lordship. I also have instructionthat the plaintiff has not closed its case, maybe there are more witnesses from theplaintiff.

Mr. Elizabeth: I am waiting for the motion of my friend, what is the motion of myfriend?

Mr. Chinnasamy: My motion is I would not be able to proceed today (and seek an adjournment.

Mr. Lucas: My Lord, if I may be heard. The Attorney General is therepresentative of all three defendants, it is the chambers and not the counsel.

Court: The problem is that everybody's responsibility is nobody's responsibility,because so many counsel have come and gone, and nobody was taking responsibilityfor (the completion of) thecase.

Mr. Lucas: The last person was Mrs. Robinson, and it is a practice at the bar whenwe hand over a case to another counsel we have to brief him. I believe the counselpresent today ought to have been briefed by Mrs. Robinson.

Mr. Chinnasamy: There are some instructions in writing. My application is that the Court grants an adjournment.

Court: All this is because of fault on your side because counsel should haveproperly handed over the file to the next counsel. What do we do now? I know youare completely in the dark; you do not know what has happened in the past.

Mr. Chinnasamy: May I make a motion that I may be shown the Court file.

Mr. Lucas: I will not object.

Mr. Elizabeth: My Lord, first of all there is a point of law that when counselwithdraws from a case counsel has to ask permission of the Court, and to myrecollection Mrs. Fiona Robinson never asked your Lordship for permission for herto withdraw and for your Lordship to give and order of leave for counsel to replaceMrs. Fiona Robinson. Too often now lawyers from the Attorney General's officeappears and disappears in cases without making the proper application before thecourt, without the Court giving the proper order to allow them to withdraw. This isnot a practice which the Court needs to necessarily condone, we have to showrespect to the Court. You cannot just appear in a case then you disappear; somebody comes in he does not know what is going on, this is why we have to face many difficulties now, because the law is not being followed. If there was a properorder before your Lordship this problem would not have arisen now. This is thedifficulty that I am facing this morning because this is a 2003 case, it is over l0 years old.

Court: What you say may be applicable to other private counsel but especiallywhen state counsel appears in a case he appears by virtue of his / her employment (as state counsel) there is continuity in office. So, whoever comes can say I represent the AttorneyGeneral and I take over the case but you cannot strictly apply the rule of leave andso on in this case, especially when state counsel appears for the parties represented by AG.

Mr. Elizabeth: So the rule does not apply to the state counsel?

Court: Not rule, but there is an exception to the rule because she appeared by virtue of her office, not in personal capacity as other private lawyers do.

Mr. Elizabeth: That may be the case but he has to come prepared, my client cannotsuffer because he is not prepared.

Mr. Chinnasamy: My Lord, let them produce their witnesses, I will cross-examine.I am not making any predicament to the process of justice in this honorable Court,I am making it very plain.

Mr. Lucas: As a member of the bar my Lord, I feel we ought not to embarrasscounsel from the Attorney General office, one, he is new in Seychelles, two, he isnot too accustomed to proceedings before this Court and number three clearly he isin a state whereby he will not be able to conduct the case in the interest of his clientwell and properly without being fully briefed with the file. I would submit itwould cause certain prejudice to the second, third and fourth defendants and itwould not be in the interest of justice. That is why I took the stands of notcondoning but to say I would not object to his application even though this is along outstanding case. But even today if my learned friend, (Mr Elizabeth) were to have continued with his case I see none of his witnesses outside. So, obligatorily we would havehad to adjourn this case today because doctor Cupidon is not present in courttoday to give evidence. Let us not be too harsh on the Attorney General's representation, our very learned friend.

Court: Mr. Chinnasamy, just for the record, you appear for the second, third and fourth defendants replacing whoever had beenstate counsel appearing before?

Mr. Chinnasamy: Yes, my Lord.

Court: Now do you apply for adjournment because you got the file only recently?

Mr. Chinnasamy: Yes, my Lord.

Court: Do you have any objection Mr. Elizabeth?

Mr. Elizabeth: My lord, I object because the reason advanced before yourLordship is not a valid reason in law as to why an adjournment should be granted.Your Lordship should weigh the interest of the plaintiff and that of the defendantbearing in mind that the plaintiff filed this case on the 3rd of April 2003, and he hasmade several complaints to the Chief Justice and everywhere that this matter hasbeen protracted due to no fault of his own, because he always attends court with hisfather, sometimes with his mother also. For some reason every time we come forcontinuation of hearing

something happens which prevents the court fromcontinuing with this case. If your Lordship is minded to give us an early date andfor Mr. Chinnasamy to take steps to correct any defect he has in his case"

[4] Now, legally speaking the Court has the discretion, power and can technically refuse adjournments. One may even unwisely suggest that Court should apply the law strictly, refuse adjournments to stop procrastination, and the accumulation of backlogs and delays. The Courts can arbitrarily and mechanically do so and show better figures on disposal rates. After all, technically, a case dismissed is a case disposed.Would that approach eventually lead to a fair hearing and justice? Would thatgive finality to the litigation or lead to multiplicity of litigations such as appeals, remittals, rehearing, new trials etc.? Would that eventually - in the long run- help litigants and reduce the backlog in our justice deliverysystem?Should the Court -while considering adjournments -apply its common sense andforesee all those long term ramifications?Should it look for short-term, quick-fix-solutions, dehumanizing the law,for a pleasing statistic?

[5] As I see it, no judge in this particular case has ever taken the liberty ofpostponing the proceedings or hearings or mentions for any personal or official or administrative reasons procrastinatingthe proceedings in this matter. Then, where does the problem lie? I leave it to you to find the answer from the above exposition, again, only the tip of the iceberg.

[6] Be that as it may. Before, I proceed to adjudicate this matteron the merits, I would like to make the following observations since this case has traverseda 14 year-long judicial journey to reach the destination of justice today, 4 years more than Odysseus took to reach home after the Trojan War. The path to justice in this case was not easy, smooth, and clearbut full of thickets and brambles.There were many obstacles,legal, procedural and practical difficulties due to inevitable change of judges and especially due to unsystematic change of counselon the defence side over a decade. All these understandably, gave rise to many acomplaint and frustration from many quarters including counsel, parties and even the Chief Justice. In sucha tiresome journey one could even easily lose sight of the goal, justice,as one trudged throughthose thickets and brambles.As a judicial officer, beingthe fourth and the last onealong the line, I have inherited the proceedings in this matter starting from the then Master of the Supreme

Court Mr. Vidot (now Judge), who was originally handling the case until the completionof pleadings, then Justice Juddoo, who left the jurisdiction following the expiry of his contract and then Justice Renaudand now finallymyselfbearing the brunt of thisdelay along the line. On the defence side, again Attorney Mr. Rajasundaram also joined the teamat one stage,put up appearance for the 2nd Defendant(PUC)replacing Mr. Chinnasamy. This tooadded fuel to the fire of delay triggered by change of counsel syndrome. Among all these variables in the process, only two factorsremained"constant"throughout the proceedings. They are:(1) thephenomenon of "unsystematic change" of counsel" and (2) continued retention of the same counsel Mr. Elizabeth by the plaintiff for almost14years. It is a sad truism that we, judges do not have the foresight of prophets to predictnor have the power to stop the"change", the change of counsel and circumstances that come up unannouncedin any givenlitigation.

[7] Having said that, I would like to restate what I had to state in **IDC vs. Global Natali and anotherCase No: 265 of 1997**that a court of law, be it appellate or trial, should steer the law towards the administration of justice, rather than the administration of the letter of the law. In that process, undoubtedly, its primary function amongst others, is to adjudicate and give finality to the litigation. However, such finality in my view, cannot and should not be given mechanically by the Court just for the sake of a technical conclusion of the case or refuse adjournments for the purpose of simply eliminating the backlog of cases, as some unwittingly believe. In each adjudication, the Court ought to ensure that all disputes including the latent ones pertaining to the cause or matter under adjudication, are as far as possible completely and effectively brought to a logical conclusion once and for all. The good sense of the Court, I believe, should always foresee the long term ramifications of its determination on any issue and adjudicate the cause so as to prevent or control the contingent delay that could possibly, proliferate in future, due to multiplicity of litigations on the same cause or matter. Needless to say, prevention of potential delays by judicial foreseeability is always better than cure. Analogically, I venture to suggest that judges are like "Physicians",they should not simply treat the symptoms but ought to cure the disease. Therefore, our Courts in Seychelles - like any other Court of such foreseeability and sense would do in the rest of the world - should adjudicate the disputes accordingly and prevent the chronic delays that have cancerously

afflicted our justice delivery system. After all, the law is simply a means to an end; that is, justice. If the means in a particular case fails to yield the desired result due to procrastination- as it has happened in the instant case - because of repeated change of counsel over a decade due to factors beyond control, we have to rethink, reinvent, reinterpret and sharpen those means, the tools of procedure in order to eradicate the judicial delay, the enemy of justice, as Lord Lane once remarked. It is evident in this case that the other stakeholders also have a major role to play along with the Courts in defeating the said enemy of justice.Hence, the Courts as well as other stakeholders should never hesitate, where circumstances so dictate, to adopt measures that are just and expedient to prevent the delays, procrastination and the resultant frustration by eschewing technical rules of procedural laws, in the due administration of justice. Now then, I would simply ask: Which is to be preferred the **"means"** or the **"end"**? Please, forgive me for my long-winded observation though*obiter* herein, I have to ventilate what I feel about **"judicial delays",** as this issuehascostmuch of judicial collegiality, our attention, time, toil, tears and sweat. Alas, the Courts short-sighted by the letter of the law, at times, prefer the **"means"** over the **"end"**and eventually end up in losing both. With this observation, I will now turn to the facts of the case on hand.

[8] It is the case of the plaintiff that due to the fault of the first two defendants, he sustained the following injuries:

(1) Broken jaw in two places

(2) 1st degree burn on stomach, hands, wrist, neck and face

(3) Electric shock

(4) Extreme pain and suffering

(5) Chipped tooth

(6) Damaged gum

[9] This resulted in permanent scars and disfigurement and partial disability to the plaintiff. Consequently, the plaintiff claims that he sustained extensive loss and damage and

suffered hardship and inconvenience in all walks of life. Hence, the plaintiff seeks compensation in the total sum of Rs 1,001,400/- from the defendants for his loss and damage as detailed below:

(1)	Moral damage for pain, suffering, trauma, mental anguish, and inconvenience	Rs300,000/-
(2)	Permanent and unsightly scars, disfigurement, and cosmetic loss all over his body	Rs 100,000/-
(3)	Permanent disability and disadvantage On the labor market	Rs 200,000/-
(4)	Loss of amenities	Rs 200,000/-
(5)	Loss of revenue and employment prospects	Rs 200,000/-
(6)	Costs of medical report	Rs 200/-
(7)	Damage to clothing	Rs50/-
(8)	Cost of glasses	Rs 1,150/-
	Total <u>Rs 1,001,400/-</u>	

[10] All four defendants denied liability. It is not in dispute that the plaintiff sustained those injuries in the alleged incident as he was working in the construction site as an apprentice/carpenter at the instance of the 4th Defendant under an apprenticeship scheme in carpentry. Undisputedly, the 1st defendant was engaged in construction work for his client the 3rd Defendant. It is not in dispute that the plaintiff was admitted in ICU and underwent medical treatments for those injuries. However, it is the case of the defendants that they never committed any fault or any act/s of negligence in the course of the plaintiff's employment with them. In essence, the 1st defendant raised the plea of *volenti non fit injuria* and alleged that the plaintiff suffered those injuries and the resultant loss

and damage through his own fault. Further the 1st defendant contends that the plaintiff was not in any regular employment with them, but was working only as an apprentice under an apprenticeship scheme introduced by the 4th Defendant, which should have taken insurance to cover the risks for the students, chosen for apprenticeship. Therefore, 4th defendant is liable to pay damages to the plaintiff if any, awarded by Court.

[11] The factsas transpire from the evidence on record arethese:

[12] The Plaintiff was at all material times an apprentice carpenter in theemploy of the 1st Defendant under the Youth EmploymentScheme. On or around the 11th October 2002, whilst working for the 1stDefendant at Saint Louis, Mahé, the Plaintiff suffered a massive electric shockwhich nearly killed him when the corrugated iron ridge capping sheets hewas lifting, came into contact with an exposed live electricity wire containing11,000 volts of electricity. As a result of the said incident, the Plaintiffsuffered broken jaw in two places, first degree burns on his stomach, hands,wrists, neck and face, electric shock, extreme pain and suffering, chippedtooth and damaged gum. The Plaintiff, who was 18 years old at the time ofthe incident, was admitted at Victoria hospital in the Intensive Care Unitwhere he received immediate medical treatment. He was discharged on the23rdOctober 2002 and continued to receive medical treatment thereafter. Hefiled the instant case before this Court on the 3rdApril 2003 claiming damages mentioned supra together with interest and costs. Altogether thePlaintiff has spent a total of about 14 years before the court awaiting justice.

[13] In essence, The Plaintiff testified that he was employed by the 1stDefendant under the YouthUnemployment Scheme earning a monthly salary of SCR 1200.00 per month forthe first year and SCR 1500.00 for the second year. 0n the day in question the Managing Director of the 1stDefendant- Mr. Roucou - was not present on site and was notsupervising the Plaintiff. One Mr. Paul Emmanuel Figaro, the foreman also testified thathe was not on site supervising the Plaintiff when the incident occurred. ThePlaintiff also stated that he was in the ceiling about two feet from the roof and thelive exposed electric wire, giving corrugated iron sheets to the carpenter to nailon the building when

one sheet came into contact with the live exposed electriccablehe suffered a sudden electric shock and the resultant bodily injuries.

[14] In his defence, admittedly the 1st Defendant wasunder a lot of pressure to finish the job. Although he denies liability on the basisthat he did not employ the plaintiff and therefore it was not his responsibility toinsure the Plaintiff but that of the 3rdand 4thDefendants. Moreover, the 1stDefendant admittedly, at several meetings with its client 4th Defendant, the Ministry ofLocal Government, had requested them to relocate the overhead electricitycable as it was a potential danger, but the latter delayed its request to the 2ndDefendant PUC.

[15] Undisputedly, the 1stDefendant was under pressure to complete the works as early aspossible and had no option but to proceed with the works despite the presence of theoverhead cables (sic) to which contact could have been avoided by giving proper instructions and protective footwear and gloves to allworkers engaged in such hazardous job. One Mr. Bevan Roch Vidot, who testified for the Defendant, confirmed that the overheadelectric cable was an issue that was discussed in several meetings. He said that in2001,2002 and 2003 he was the District Administrator for St Louis and wassupervising the project on behalf of the government. He testified that the projecthad stopped and the Minister Fritchot was made aware of it. He said that one Mr. Fashanuwas in charge of the project. He stated since there was an electric cable passingoverhead, he informed Mr. Fashuba to have the cable removed. He further stated that the Minister insisted that the project continues despite the cable. Itwas the Minister's decision to push on with the project, he said. He also confirmed thatMr. Roucou insisted that the electricity cable be removed and Mr. Fashuba saidthat he would remove it but it was not removed. According to this witness, the Minister wantedthe project to be completed urgently and the Contractor needed to work. One Mr. David Richard Hassan, an electrical engineer working for PUC testified for the 2nd Defendantthat he had explained theprocedure for all projects in Seychelles. He testified that all projects have to be submitted tothe Planning Authority for approval. The Planning Authority then send theproject to the different agencies concerned for their comments. He confirmed thathad the project been received by PUC, it would have imposed the conditionthat the electricity cable had to be relocated at the cost of the Applicant. He alsoconfirmed that the cable is made of aluminium and

that there is 11,000 volts ofelectricity in the cable which is exposed and not insulated. He said that there aretwo types of electricity cables the insulated ones and the exposed ones [notinsulated). He stated that the electricity goes into a transformer where it is steppeddown to 240 volts and connected to the houses. If a person stands even two inches away from the exposed cable it will discharge. He also confirmed thatno request was made or received from the 1st Defendant to disconnect theelectricity or relocate the cable. He finally stated that there was no request either fordiversion of the cable at PUC from any of the Defendants and that it was theresponsibility of the Applicant to apply for relocation or diversion of electricitycable.

[16] LIABILITY

[17] Obviously, the liability of an employer for the damages sustained by his servant in thecourse of employment has been considered in several cases before the Court. It is a well-set principle of law that it is the dutyof the employer to ensure that the work in which his employee is engaged shouldbe safe and that the failure on his part to do so constitutes "fault" and that he isresponsible from any damages resulting therefrom which the employee maysustain."videjudgment in Georges Sidney Larame v Coco D'or (Pty) Ltd Civil Side No. 172/1998,per Perera ACJ.

[18] The evidence in this case reveal that the Plaintiff was a young man of 18 yearsold at the time of the incident. He was working under the Apprentice Schemeimplemented by the government and he was assisting the carpenter by passingon corrugated iron sheets to him on the roof of the building whilst standing inthe corridor. Directly overhead where he was working there was an exposed11,000 volts' electricity wire. It was whilst passing one of the corrugated ironsheets to the carpenter that the sheet came into contact with the cable and theincident happened. The Plaintiff was obviously working in a highly dangerousenvironment, potentially fatal. He was not provided with any safety clothing, hewas not supervised, he was not warned of the danger posed by the electricity wire overhead. He was not given or taught a safe system of work and he was practicallyabandoned and left to fend for himself by his employer.

[19] Indeed, Article 1384 (1) of the Civil Code holds a person liable for damages caused to a third party by theact or omission of a person for whom he is responsible or to someone by thingsin his control. I agree with the submission of the Plaintiff that it was the responsibility of the 1stDefendant, his employer, to ensure that the electricity cable was removed,diverted or disconnected on or before the time that the building had reached aheight which was close to the exposed live electricity cable as the same clearlyposed a grave danger to the Plaintiff and all the other workers on site. Thedanger posed by the cable was appreciated by all concerned including the 1stDefendant, and its witnesses Mr. Bevan Vidot, Mr. Fashuba and others, who testified as witnesses in this matter. But, instead of takingsteps to have it removed, relocated or disconnected, they all turned a blind eyeand insisted that the work was urgent and it had to be finished despite thepresence of the cable and the danger which it posed to the Plaintiff. PUC confirmed that it did not receive any request from any of the parties to relocate, divert ordisconnect the electricity.

[20] In order to establish liability under 1384(1) the three elements are required. They are (i) damage (ii) a causal link and (iii) fault. When I carefully perused the evidence on record, one common thread is always seen passing through the entire defence evidence. That is the "blame game". 1st defendant blames the plaintiff for coming into contact with live exposed electric wire at its construction site as well blames the 2nd, 3rd defendant for not taking steps to remove that danger from there. The 2nd Defendant blames the 1st and the 4th defendant and thus each party to the case sets the blame-game in a vicious cycle.Obviously, they all implicitly admit the damage and the fault but denies the causal link to connect the Tort-feasor.

[21] I agree with the submission of the plaintiff that all defendants werefactually at faulthowever, the degree of their contributory negligence or recklessness by each defendant differ from one another. In my view, it is not simply a question fact, which constitute "the primary cause" for the fault committed by the 1st defendant but a question of degree, whichother defendants have contributed independently of the other to this mishap, whose commission or omission singly or in combinationconstitutes "a secondary cause" on its own for the mishap.Please, see Shami Properties (Pty) Ltd vOliaji Trading

Company Ltd (2008) SLR 176 for the concept of “the primary cause”, “the secondary causes”, the extent or degree of contributory negligence by parties, comparative study on our laws vis a vis French and English doctrines and jurisprudence on this subject.Applying the same yard stick, which this court calibrated in Shami supra, I find that there is divided responsibility –*responsibilitépartagée* -on thepart of each defendants save PUC,*vide* the dictum propounded by Sir Campbell Wylie CJ (as then he was) in *Chariot v Gobine* (unreported) SSC 5/1965.

[22] Incidentally, on the issue as to whether “Employer-Worker” relationshipexisted between the 1st defendant and the Plaintiff,I find that the said relationship did exist in the instant case between the 1st defendant and the Plaintiff, in the eye of law, at the material of the accident that happened during the course of his employment. For the reasons stated by this court in a similar case -Kenny Marie v Philip Rath, Civil Side No. 268/1999 – I endorse the said finding on employer-worker relationship in the present case as well, as it is on all fours with the previous case.

[23] As regards“Volenti non fit injuria” I totally reject this line of defence taken by the 1stdefendant since there is no evidence on record to substantiate the fact that the plaintiff voluntarily assumed the risk of being electrocuted in the course of his employment nor are there circumstances to infer unequivocally that the plaintiff voluntarily assumed such risk in his work-environment.

[24] Having said that I also find that as a result of the faultjointly committed by all three defendants No:1, No:3, and No: 4 (save No:2, the PUC),the Plaintiff suffered severe injuries which nearly electrocuted him. The 1st defendant in my judgment hascontributed to “the primary cause” and the other two defendants No:3 and 4 too, have also contributed to “the secondary causes”, for the mishap.

[25] I hold the 1st defendant liable in fault asa major tort-feasor for having contributed to**the primary cause** for the simple reason that the 1st defendant as an imprudent employer has asked or allowed or caused the novice plaintiff to perform the said hazardous job without

taking any safety measure or providing protective cloths or glovesor footwear and without making the provision for such information, instruction, trainingand supervision as is necessary to ensure the health and safetyat work of his employees. In fact, knowing the existence of the potential danger, knowing the fact that 4th Defendant did not remove the that danger despite repeated requests, the 1stdefendant assumed the risk and proceeded to engage the plaintiff, a novice to do the job. This shows the element of recklessness on the part of the 1st defendant.

[26] I completely discharge the 2nd defendant from any liability since there is no evidence on record to establish any overt act or omission on its part or to show its causal connection to the fault alleged.

[27] However, I hold the 3rddefendant, the MINISTRY OF EMPLOYMENT & SOCIAL AFFAIRS liable in delict forbeing one of the contributors of the secondary causesin that it failed to ensure the safety of the place of training and the nature of worksassigned to its selected candidate by the trainer (1st Defendant) during the training period. It also neglected to ensure that its candidate, the trainee sent for work based experience are covered under an insurance policy to meet any eventuality and allwork related risks, which may arise in the course of the training scheme.Being the Ministry responsible for the administration of labour law in this country, it should to have taken steps to enact necessary legislations such as “Employer’s Liability Act”.Although the Industrial Training Centre, where the plaintiff was a student at the material time, had undertaken in exhibit D5 that it would take the necessary insurance, the 3rd Defendant failed to ensure that suchinsurance had been taken before sending its students for Work Based Experience, which any other a reasonable coordinator or administratorwould have done in the given circumstances of the case. In any event, it failed to remind or advise or alert or instruct the trainer beforehand on the safety of the candidate entrusted to them for Work Based Experience.

[28] Furthermore, I hold the 4th defendantthe MINISTRY OF LOCAL GOVERNMENT YOUTH AND SPORT also liable in delictfor being one of the contributors of the secondary causes **in that,** being the owner having possession and control of the premiseswhereupon the danger of a high-tension exposed- electric-live-wireswere

hanging and before handing over the possession of suchpremises to the 1st defendant for construction, as a prudent client and involved in the implementation of the project, it should have removedon its own all dangers including the dangerous exposed-live-electric wires from the premises in good time. However, it failedor neglected to do so.Moreover, despite notice and repeated requests from the 1st defendant vide exhibit D7, it failed to pay heed to the request for the removeof that danger;but it appears it had been very keen only on the speedy completion of the construction work by the 1st defendant at the site.

[29] Having regard to all the circumstances surrounding the "primary cause"and the degree of "contributory negligence"on the part of the 1st defendant, in my considered view, it is only 50% responsible for the mishap in respect of the "primary cause", it contributed.Taking all the circumstances surrounding the "secondary causes"and the degree of "contributory negligence"on the part of the 3rd defendant, the MINISTRY OF EMPLOYMENT & SOCIAL AFFAIRS, Ihold and apportion the blameof “contributory negligence” only 20% on its part for the loss and damage the plaintiff suffered in the entire episode. As regards the 4thdefendant, the MINISTRY OF LOCAL GOVERNMENT YOUTH AND SPORT, I hold and apportion the blame of “contributory negligence” only30% on its part that resulted in the loss and damage to the plaintiff.

[30] Hence, the consequential damages payable by the defendants jointly should be apportioned according to the percentage of blame assessed supra. Having carefully scrutinized the entire claim made by the plaintiff under different heads for loss and damage, I find the quantum claimed by plaintiff under all heads for loss and damages are excessive, unreasonable and exaggerated. They should be reduced to accord with reasoning and justice.

[31] In my meticulous assessment based on the evidence on record and all the precedents cited by the plaintiff in his submission and taking all the relevant facts and circumstances into account,Iaward the following sumsfor damages to the plaintiff and against defendants, Nos:1,3 and 4 jointly but as apportioned supra.

(1) Moral damage for pain, suffering, trauma,

mental anguish, and inconvenience	Rs100,000/-
(2) Permanent and unsightly scars, disfigurement, and cosmetic loss all over his body	Rs 100,000/-
(3) Permanent disability and disadvantage on the labor market	Rs 150,000/-
(4) Loss of amenities	Rs 50,000/-
(5) Temporary Loss of revenue and employment prospects	Rs 50,000/-
(6) Costs of medical report	Rs 200/-
(7) Damage to clothing	Rs50/-
(8) Cost of glasses	Rs 1,150/-
	Total <u>Rs 451,400/-</u>

[32] Having said that, in the absence of any pleadings in the defence *a fortiori* in the absence of any evidence on record to the contrary, I hold that the plaintiff did suffer actual loss and damage only in the total sum of ***<u>Rs 451,400/-</u>***.

[33] On the strength of the reasons discussed hereinbefore, I will now proceed to apportion the liability among the three defendants,to pay the said sum as follows:

1. I order the 1st Defendant, ROUCOU CONSTRUCTTON CO. (PTY) LTD to pay 50% of the total award, that is: Rs 225,700/- to the plaintiff with interest on the said sum at 4% per annum - the legal rate - as from the date of the plaint.

2. I order the 3rd Defendant,the MINISTRY OF EMPLOYMENT & SOCIAL AFFAIRS to pay 20% of the total award, that is: Rs 90,280/- to the plaintiff

with interest on the said sum at 4% per annum - the legal rate - as from the date of the plaint.

3. I order the 4th Defendant, the MINISTRY OF LOCAL GOVERNMENT YOUTH AND SPORT to pay 30% of the total awardthat is: Rs 135,420/- to the plaintiff with interest on the said sum at 4% per annum - the legal rate - as from the date of the plaint; and

4. Considering the entire circumstances of the case, I make no orders as to costs.

[34] In the final analysis, I therefore enter judgmentfor the plaintiff in the total sum of ***Rs 451,400/-***and against all three defendants namely: No:1, No:3, and No: 4, apportioning liability among them in the ratio hereinbefore pronounced.

Signed, dated and delivered at Ile du Port on 5 September 2016

D Karunakaran
Judge of the Supreme Court