

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CA8/2015**

[2016] SCSC 726

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**LEIF LOW-KEN**  
**of St-Louis, Mahe**  
Appellant

versus

**KEVEN FANNY**  
**of St Louis, Mahe**  
Respondent

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Heard: 2 June 2016  
Counsel: Mr John Renaud for appellant  
Mr Elvis Chetty for respondent  
Delivered: 6 October 2016

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**JUDGMENT**

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**McKee J**

- [1] This is an appeal from the Magistrates Court in exercise of its civil jurisdiction. The liability of the original Defendant and now Respondent is not in dispute. This is an appeal by the now Appellant and original Plaintiff on *quantum* only since he is dissatisfied with the financial award made in his favour.
- [2] The particulars of loss and damages sought in the original Plaintiff fell under three headings:
- [3] Heading A] Cost of spare parts .....SR 94,650,

- [4] Heading B] Cost of labour to repaint the vehicle and materials – SR 29,000,
- [5] Heading C] Moral damages ..... SR100,000

[6] The sum sued for was hence SR 223,650.

[7] In the judgment the Magistrate dismissed the first and second heads of the claim and awarded the sum of RS 20,000 for moral damages. Hence the full amount of the award was RS 20,000.

[8] It is against the *quantum* of the award that the Appellant now appeals. The thrust of the appeal is in the third ground of the appeal where it was submitted that the magistrate fell into error when she found that she could not rely on the written quotations or estimates of repairs to the vehicle of the Appellant as a result of the fire and hence excluded these factors from her considerations. Her findings in this respect were as follows.

[9] In respect of Heading [A] she found that the invoice [exhibit 2] was a pro-forma document which was not dated. In respect of Heading [B] she noted that the quotation [exhibit 4] carried the date of 9-9-2011 which was four days prior to the date of the incident which occurred on 13<sup>th</sup> September 2011 [which date can be seen from the police report [exhibit P1].

[10] With respect to the magistrate she did not appear to have looked beyond the two estimates produced to the court to see if assistance could be found from the further evidence before the court. Hence I have found it necessary to look at all the evidence before the court in respect of the damage to the vehicle and the costing of repairs as set out in the two estimates.

[11] I look at the invoice admitted as Exhibit P2. This is an order form from the business "Paul Auto Parts". It is true that it is undated. I look at further pieces of evidence. The Notes of Proceedings record that the Appellant then Plaintiff told the Court that the cost of spare parts was Rs 96,650. The costing from the estimate from Messrs Paul's Auto Parts has the figure at Rs 94,650. There is a difference in the figures quoted, namely, Rs 94,650 and Rs96,650 but this may have been a genuine error made by the Plaintiff or the

figure in the Notes of Proceedings is wrong. However I have no difficulty in finding that there is evidence that the costing by Messrs Paul's Auto Parts refers directly to the Appellant's vehicle after it was damaged. This is found in the evidence of PW4, Leroy Labiche. He prepared the costing. He could not recall the exact date he examined the vehicle but he stated "*The car could not move because everything inside was melted by the heat*". Later he stated "*Dashboard, steering wheel everything with rubber was melted*". I can infer from these two pieces of evidence that Labiche examined the vehicle after the fire and then drew up his costings. In my view the Magistrate could have taken this costing – exhibit P2 – into consideration. The weight which should be ascribed to this document is a separate issue.

- [12] The Magistrate also elected to exclude item exhibit P4 from her considerations since the date on the estimate was some four days prior to the date of the fire. This is certainly the case although in this case the document is signed. There was evidence from a Peter Andre, PW6, who signed the estimate on the letter-headed paper of Michel's Garage of Beau Vallon. This business undertakes spray painting and panel beating. Mr Andre stated that by trade he was a panel beater and spray painter and is of Beau Vallon. He gave evidence in these words "*I made an assessment to the burned[my underlining]car.*" The evidence was not subject to cross-examination. I can only infer from that evidence that he examined the vehicle and prepared his estimate after the date of the fire. I also find that this estimate should be considered when *quantum* is considered. It may be that there is a genuine reason for the erroneous date being given as before the date of the incident. Again as to the weight to ascribe to the estimate this is still a matter for consideration.
- [13] In my opinion Counsel for the Appellant, and the original Plaintiff, is correct in submitting that the Magistrate fell into error when she failed to take into account the quotations or estimates admitted as P2 and P4 when considering the question of quantum.
- [14] Consequently I re-visit the matter of *quantum*. I have to consider the extent of the damage sustained to the Appellant's vehicle as a result of the fire which spread from the adjacent vehicle. The Appellant, as Plaintiff, stated that his vehicle was damaged in different parts. He also produced two photographs showing the front of his vehicle S8664. He also

produced the relative police report which recorded that the year of manufacture of his vehicle with registration number S8664 was 1990, which I accept. At paragraph 5 of this report it is recorded that the damage was "*melted front grills/lights paint*".

- [15] PW3, Jose Rose, Assistant Fire Fighter gave evidence of what he saw at the scene. He stated that the vehicle S8664 was damaged by heat at the front at the bumper. In cross-examination he stated that the damage was to the paint and also to the front bumper due to the heat.
- [16] PW4, Leroy Labiche, referred to above, said that everything inside was melted by the heat, the dashboard, steering wheel and everything with rubber. However there is no supporting photographic evidence of the inside of the vehicle and no other witness spoke to this interior damage.
- [17] PW6, the said Michel Andre, referred to damage to the paintwork and outlined the work necessary to repair and repaint. His estimate was Rs 29,000 but he stated that this could increase with time.
- [18] The Respondent gave evidence but not in respect of the damage to the vehicle of the Appellant. The wife of the Respondent also gave evidence. She stated that vehicle S8664 was not in good condition and referred to its age. Another neighbour of the Appellant and Respondent, Jeffrey Appo, also gave evidence. He knew the vehicle in question since it was parked outside of his house. He stated that the vehicle had not been used for two to three years and had a flat tyre, broken seat and a darkened windscreen.
- [19] This was the relevant evidence in respect of damage. The lower court was not provided with a valuation, for insurance purposes, of this type of vehicle manufactured in the year 1990.
- [20] I find that it is more likely than not that the fire caused damage to the front of vehicle S8664. This can be seen from the two photographs which were produced as exhibits, but was restricted to this area. From the photographs, the paintwork at the sides of the vehicle does not show fire damage. I exclude consideration of alleged fire damage within the vehicle as suggested by witness Labiche; there is no other independent evidence in

support his assertion. The evidence of Mr Labiche and the estimate prepared on behalf of Messrs Paul Auto Parts does not disclose in what manner the replacement of all of the thirteen items as listed is directly connected to the damage caused by this fire. It also has to be borne in mind that this vehicle is some twenty years old.

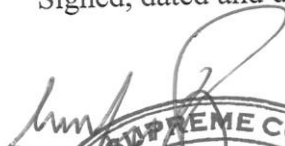

- [21] However I accept that the fire did cause damage to the front of the vehicle. In respect of this finding and by reference to the estimate prepared by Messrs Paul Auto Parts I make a restricted award in respect of replacement parts, namely in relation to items [1] 2 head lamps, cost Rs12,500<sup>00</sup>, item [8] 1 set of parking lights Rs 2200, and item [9] 1 front grill Rs 3500. The total cost is hence Rs 18,200<sup>00</sup>.
- [22] I also find that there was fire damage to the paintwork at the front of the vehicle; this is borne out by evidence and the photographs. I find that the Appellant is entitled to be recompensed for the cost of the repainting of the vehicle. In my view the vehicle should not be partially repainted and I would make an award in full in this respect in conformity with the estimate provided by Messrs Michel's Garage, namely Rs 29,000.
- [23] It is my opinion that the Appellant is entitled to receive payment for damage suffered to his vehicle under Headings [A] and [B] of his claim, namely in respect spare parts, repainting and labour. While there is a labour costing in respect of the repainting of the vehicle there is no costing for labour in respect of the installation of the replacement parts. I make an award for the cost of labour in this respect of Rs6,800; thus the total award under Heading [A] for spare parts would be Rs25,000. This would be in addition to the sum of Rs 29,000 in respect of the repainting of the vehicle under Heading [B].
- [24] In my opinion the Appellant is entitled to recover from the Respondent the sum of Rs54,000 in order that the above items can be installed and the vehicle repainted.
- [25] I confess that I find myself in some difficulty with the reasoning of the Magistrate when making an award of Rs 20,000 in respect of moral damages. I am not so sure that the disappointment in seeing his vehicle damaged by fire raises a liability for payment of moral damages. In my opinion the extent of the compensation should be restricted to the

reinstatement or partial reinstatement of the vehicle by way of repair and repainting. In the overall context of this matter I would disallow the earlier award for moral damages.

[26] According, the appeal succeeds to the extent that the amount of the award is SR FIFTY FOUR THOUSAND [RS54,000] and this figure is to be substituted for the figure of Rs20,000 in the original judgment. Accordingly judgment is now entered in favour of the Appellant for the sum of SR 54,000.

[27] The Appellant is also entitled to his Costs in the original action and in this appeal.

Signed, dated and delivered at Ile du Port on 6 October 2016

  
  
C. McKee  
Judge of the Supreme Court