

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CS118/2013**

**[2017] SCSC 408**

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Mervin Barbe                  Plaintiff

versus

Garry Laurence              Defendant

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Heard:                  12 October 2015, 13 February 2017

Counsel:              Mr. Joel Camille for the plaintiff

                                 Mr. Anthony Derjacques for the defendant

Delivered:            17 May 2017

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**JUDGMENT**

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**M. TWOMEY, CJ**

[1]     The Plaintiff, a 23year old man on 1<sup>st</sup> April 2013 was hit by a car driven by the Defendant after crossing the road at Plaisance, Mahé.

[2]     He averred in his Complaint that the Defendant was driving too fast, had failed to give any or sufficient warning of his approach, had failed to keep a proper look out and had failed to stop, slow down, steer or otherwise control his vehicle so as to void hitting him.

[3]     He further averred that as result of the accident he suffered personal injury; namely a fracture of the left femoral shaft, the loss of a tooth and pain. He also stated in his Complaint

that he suffered loss of earnings which together with his other losses resulting from his accident amounted to SR500, 000.

- [4] The Defendant filed a bare denial of the Plaintiff.
- [5] The Plaintiff testified; stating that he was an IT technician at SPTC. He had travelled in a van on 1 April 2013 from town to Plaisance where the driver had stopped to allow him to go to the shop. It was around 8 pm at night. He had crossed the road and was near the pavement on the mountainside of the road when he was hit by a car which had no lights on. He lost consciousness after the impact and woke up in hospital.
- [6] He had a swollen face, bruises on his head and hand, had lost a tooth and broken his left leg. He could not recall how long he spent in hospital but stated that he had to undergo physiotherapy for another seven months after being discharged. He had to stop working. He could not reach the house he had been renting with this girlfriend who was expecting his baby because of his leg injury and had to move into his mother's house. He could not meet his daily expenses. He continues to suffer from discomfort in his leg.
- [7] His evidence as to the accident was corroborated by his mother Marie-Lise Barbé, his brother Guiliano Barbé and the driver, Norbert Dodin who were all in the van and observed the accident. Guiliano Barbé added that the Defendant did not stop until people started calling to him to stop. He disembarked from his car and was wearing a police uniform and was talking on his phone.
- [8] Dr. Jhjewla Manoo, working at the Department of Orthopaedics at Seychelles Hospital also testified. He had known and worked with one Dr. Ben Wamamili who had left the jurisdiction. He was familiar with his signature and confirmed that the latter had prepared a medical report about the Plaintiff's injuries and treatment. The report confirmed that the Plaintiff had fractured the shaft of his left femur. He has operated on; a plate with screws were inserted and he spent 18 days in hospital. The report confirmed that the Plaintiff was seen in June 2013 and the fracture had not healed. In July 2013 he was seen again and by that time the injury had almost healed.

- [9] The Defendant also testified. He stated that he was a police constable. He gave no evidence as to how the accident had happened; only that he was driving along the road at 20km per hour when the incident occurred.
- [10] The Plaintiff made no written submissions. The Defendant did submit and stated that insofar as liability was concerned the Plaintiff had failed to discharge the burden of proof to the required standard as the Defendant was driving within the speed limit at night with minimised vision and that Plaintiff was negligent in crossing the road.
- [11] On the evidence presented before the Court, I find otherwise to the Defendant's testimony. In road traffic accidents there is a presumption under Article 1383 (2) that unless it is proved that the damage was solely due to the negligence of the injured party, the act of a third party or an act of God, the driver of the vehicle shall be held to be liable.
- [12] That presumption has not in any way been rebutted by the Defendant. He neither called any witnesses nor adduced any evidence apart from stating that he was driving at 20 km per hour on the stretch of road where the accident took place. I believe the Plaintiff and his witnesses and therefore find that the Defendant has committed a *faute* for which he is liable.
- [13] In regard to the quantum of damages the Defendant has submitted that the Plaintiff has suffered no permanent incapacity. He submitted recent comparative awards made for fractures of the leg. In *Tucker v La Digue Lodge* (unreported) C.S 343/ 2009, the Court awarded the sum of SR190, 000 for the fracture of a femur. In *Farabeau v Casamar Seychelles Ltd* (2012) SLR 170, a sum of SR 350,000 was awarded for a similar injury but this included permanent disability and atrophy of the limb.
- [14] In *Vital v Attorney General* CS 348 of 2005 in a similar injury, Renaud J awarded SR 200,000 but in that case the claimant had a residual limp. After a survey of the law in this area, Renaud J went on to state that following an injury, the claimant is entitled to damages for both physical and mental pain and suffering for the past, present and future. He relied on the case of *Larame v Coco D'Or (Pty) Ltd* (2001) SLR1 4 and *Ventigadoo v Government of Seychelles* (2007) SLR 236 where the Court stated that in claims for

fractures to limbs from which a claimant recovers completely, the substantial award should be made for “pain and suffering”, the main damages.

- [15] It seems to me that there is much confusion in the award of delictual damages. There is in effect three types of damages in cases of delictual harm: corporal damage, material damage and moral damage.
- [16] The corporal damage or injury is the bodily injury caused to the victim. In the present case it is the loss of a tooth and a broken femur. In some cases it can be the death of a person. These damages are meant to compensate for the diminution in the enjoyment of life of the victim. It includes the physical pain and suffering of the victim.
- [17] The material damage can be the destruction of things caused by the delict but also economic damage brought about by the inability of the victim to work or make a living.
- [18] The moral damage reflects the moral and/or psychological suffering, pain, trauma and anguish suffered by the victim as a result of the delict.
- [19] It would have been preferable for the Plaintiff to claim according to the scheme that I have set out above. However, despite the different heads under which he has claimed and bearing in mind the three possible sources of his claim for damages, I find as follows bearing in mind current trends in damage awards, the length of time he spent in hospital and recovery from his injury and the necessity for further operations which was unrebutted: for his corporal damage, that is the physical injury he has suffered I award SR 200,000.
- [20] For loss of earnings, I use the simple formula of what he failed to earn as a result of the accident on the available unrebutted evidence. The Plaintiff was an IT operative. He was earning SR6, 300 monthly. He was off work for eight months. He received SR 2000 from Social Security monthly. Had he worked for the eight months he would have received SR50, 400. Instead he received SR16, 000 from Social Security. He is entitled to the difference in earnings, that is SR 34, 400.

[21] For morel damages that is his anxiety, stress and depression as claimed I award him a further SR20, 000.

[22] In summary the Defendant is to pay the Plaintiff the sum of SR200, 000 for corporal damage, SR34, 400 for material damage and SR 20,000 for moral damage totalling SR 254,400 together with interest and costs of this suit.

Signed, dated and delivered at Ile du Port on 17 May 2017.

**M. TWOMEY**  
Chief Justice