

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CS/64/2013**

**[2017] SCSC**

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1. Gelase Constance  
2. Fleurette Constance  
3. Elfa Constance  
4. Nelson Constance  
5. Lionel Constance                      Plaintiff

versus

Walter Alcindor                      Defendant

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Heard:                      13 March – 6 June 2017

Counsel:                      Mr. Joel Camille for plaintiffs

    Mr. France Bonte for defendant

Delivered:                      7 July 2017

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**JUDGMENT**

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**M. TWOMEY, CJ**

[1]        In a tragic road traffic accident on 3 December 2009, Lormina Constance the 18 year old daughter of the First and Second Plaintiffs and sister of the Third, Fourth and Fifth

Plaintiffs was badly injured. She survived for six days and then developed multiple organ failure and died on 9 December 2009.

- [2] Her *ayants cause*, the Plaintiffs, sue the Defendant, the driver of the car in which she had been travelling at the time of the accident, for her death for his negligence that caused her injuries and demise and claim both pecuniary and moral damages.
- [3] All the Plaintiffs testified. Lormina was a student at the Hotel School in La Misère. She was due to school start at 3pm and finish at 8pm on the 2 December 2009. It was expected that she would call at some point as it was her sister's birthday but no call came.
- [4] Instead, early in the morning of 3 December, a policeman came to the door and told her family that she had been injured in an accident and was in hospital. The Plaintiffs described seeing her motionless, swollen and bloodied body in hospital in the Intensive Care Unit.
- [5] It is clear from the evidence that they were a close knit family and the news and the sight of their daughter and sister was a traumatic and disturbing experience for all of them.
- [6] The police report of the accident which was unchallenged was that the Defendant was driving vehicle S1829 from town at Bois de Rose Avenue towards the south on 3 December 2009 when he lost control of the vehicle which crashed in the iron crash barrier, overturning and landing on the other lane of the road.
- [7] Dr. Kenneth Henriette also testified. He is presently Director of Seychelles Hospital. He explained the medical report compiled on Lormina. She had received a severe head injury with basal skull fracture, a chest injury, a fractured left clavicle, fractured ribs and lung contusion.
- [8] The Defendant in his Statement of Defence denied that the accident occurred as a result of his negligence or that the Deceased suffered injury and died and that his *ayants cause* suffered loss and damages. He put the Plaintiffs to strict proof of their averments but he

did not testify or bring other evidence. In the trial he did not challenge their evidence or that of their witnesses in any material way.

- [9] On the evidence produced therefore, I find that the Defendant was solely to blame for the accident in which the Deceased was killed. He is therefore liable for damages arising from his acts of negligence.
- [10] In *Sullivan v Magnan and Anor* (unreported) [2016] SCSC 491 I decried the lack of submissions by Counsel on comparators for the assessment of quantum. Although I continue to reiterate that Judges cannot pluck figures from the sky, this lapse by Counsel continues.
- [11] In any case, the first two plaintiffs have claimed SR 100, 000 each for pain, suffering, distress and anxiety, SR 150,000 each for loss of expectation of life and SR75,000 each for loss of a child, altogether SR 650,000.
- [12] In *Sullivan* (supra), I explained that given the provisions of Article 1149 of the Civil Code, a composite award for all non-pecuniary losses should be made. I relied on the authority of *Adonis v Ramphal* (2013) SLR 387 to state that claims for pain, suffering, anxiety and distress should be under one head, that of moral damages. On the basis of *Adonis* (supra) and the Quebecois case of *Andrews v Grand & Toy Alberta* [1978] 2 SCR 229, loss of expectation of life should be added to that list.
- [13] The claim for SR 650, 000 for moral damages is viewed therefore from this perspective. In *Davidson and ors v Surf and Cerf Properties and ors* (unreported) CS 41/2014, following *Government of Seychelles v Rose* (2012) SLR 364, I stated that a departure from small awards was justified and awarded SR 100, 000 for each of the Deceased' parents. That award was made based on the fact that only that amount had been claimed.
- [14] The death of a child is very painful for every parent and seeing their daughter languishing as she did for six days all the more traumatic and heart-breaking. In the circumstances I am of the view that SR150, 000 is a reasonable sum to award to each of them.

[15] I cannot grant any award for the pain and suffering of the Deceased, Lormina Constance who survived the accident by six days because it was not claimed. This was an unfortunate omission in the pleadings.

[16] I also grant the siblings of the Deceased the sum of SR 150,000 each on the same basis that I granted the award to the parents of the Deceased.

[17] The material damage was not challenged in any way and therefore the sums of SR 11,460 consisting of funeral and allied expenses is granted.

[18] I therefore make the following Orders:

1. I Order the Defendant to pay the Plaintiffs the sum of SR150, 000 each for moral damage and the sum of SR 11,460 as material damage, a total of SR761, 460.
2. The whole with costs.

Signed, dated and delivered at Ile du Port on 6 July 2017.

**M. TWOMEY**  
Chief Justice