

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS77/2015

[2017] SCSC

MARC DENIS

Petitioner

versus

MICHEAL LAURENCE

Respondent

Heard: 28 September 2017

Counsel: Mr Rajasundaram for petitioner

Miss Alexandra Benoiton for respondent

Delivered: 28 September 2017

JUDGMENT

R. Govinden, J

- [1] The Plaintiff Marc Denis, is a 56 years old casual labour residing at the Roche Caiman Housing Estate and the Defendant is a driver of Bel Air, Mahe.
- [2] The Plaintiff claimed, in his plaint, that on the 16th of May 2014 at Roche Caiman, the Defendant, through his fault and negligence, whilst he was operating his vehicle S13498 collided with the Plaintiff and thereby caused the Plaintiff serious injuries. The Plaintiff

therefore further claimed that, in law, the Defendant is liable for his loss which amounts to Sr700,000. The Plaintiff says that this amount is for damages that he incurred as a result of inconvenience, stress, anxiety and future loss of earnings.

- [3] The Defendant on the other hand, in his Defence, does not deny the fact that the vehicle he was driving at the time and place mentioned in the plaint collided with the Plaintiff. The Defendant also does not deny that he was at all material time operating that said vehicle. However, the Defendant denies fault and negligence and avers that he was at all material times behaving as a prudent and reasonable driver. The Defendant avers, in the alternative, that the accident occurred as a result of the fault and negligence of the Plaintiff.
- [4] The Plaintiff, according to the fact of this case, was treated by a Consultant Orthopaedic Surgeon, Dr Abdelhaq, following the accident. Dr. Abdelhaq was summoned by the Plaintiff. However, Dr. Chetty Nagayamurthy was the medical officer who came to Court to produce the medical evidence of the Plaintiff. Dr. Chetty produced the medical report of the Plaintiff dated 31st of October 2014 written by Dr. Abdelhaq. The Report contained evidence of the treatment and hospitalization of the Plaintiff as a result of the accident that occurred on the 16th of May 2014.
- [5] The doctor testified that, as per the medical report, the Plaintiff was admitted at the Victoria hospital in an unstable condition with severe pain in the left hip. He was diagnosed with a pelvic bone fracture, and a tibial plateau fracture on the left knee. He testified that skin tractions and skeleton tractions were carried on the injuries and the Plaintiff was discharged on the 17th of June 2014. On the 24th of September 2014, upon being reviewed, there existed some pain and tenderness in the injured areas of the Plaintiff's body.
- [6] The doctor, however, testified that he cannot give further evidence as he did not see the patient upon hospitalization and he cannot say what happened and how was the physical state of the Plaintiff when he was admitted.

- [7] The Plaintiff, Mr Marc Denis, testified. The Plaintiff testified that he lives at the Roche Caiman Village. He says that the village where he resides is separated by a road coming from Victoria to the South Mahe. He testified that opposite this road, on the seaside next to the Eden Island, there is a beach where there a friend who was working in the morning of the 16th of May 2016. His testimony is that he went to town early in the morning and after that day he decided to go to that friend's place at the said beach and he helped him with some chores, by breaking some ice. On the way back to his place a friend dropped him near the road on the sea side of the south bound lanes of that Roche Caiman road. From there he crossed two lanes of the south bound road and then step on in the middle part where there was a casuarina trees after this he attempted to cross the North bound lanes going towards Victoria. He testified that when he was crossing the North bound lane he got hit by the defendant's vehicle. According to the Plaintiff after being hit he fainted and he regained conscious when he was at the hospital and whilst being in the hospital ward.
- [8] The Defendant, Mr Micheal Laurence, testified. His evidence is that on the 16th of May 2014 at around 11.20 a.m he was coming to town in his pickup S 13498 in the Roche Caiman North bound road accompanied by his wife. When he reached passed the bridge next to Roche Caiman Housing Estate he saw the Plaintiff crossing his lane from the sea side towards the mountain side, he knew the Plaintiff upon sight. He was driving on the right side lane of the two North bound lanes leading to Victoria. He testified that the Plaintiff was walking with a gait that made him thought that the Plaintiff was drunk. According to the Defendant he slowed down so as to enable the Plaintiff to go to the adjacent left lane and he was not driving at a high speed.
- [9] It is further his evidence that having crossed his lane and half way into the North bound left lane the Plaintiff took some steps backward after he heard the noise of a fast incoming car coming from the back of the Defendant's vehicle. According to the Defendant when the Plaintiff stepped backward the Defendant tried to take evasive action so as not to hit the Plaintiff, but nonetheless he hit him with his left side of his vehicle. Thereafter, he assisted the Plaintiff on the scene of the accident until the ambulance

came. His testimony is also that at the time the Plaintiff was being assisted he noticed that the Plaintiff was drunk.

[10] The Defendant also called his wife, Mrs Sabrina Laurencine, as a witness. She testified that she was in the vehicle being operated by the Defendant at the material time. She testified that the Plaintiff had completely finished crossing the right lane of the North bound Roche Caiman road in front of the Defendant's vehicle and that whilst starting to cross the left North bound lane the Plaintiff seems to have heard an incoming vehicle coming from the back of the Defendant's vehicle. There and then the Plaintiff stepped backward and it was at that time that the Defendant collided with the Plaintiff. She also claimed that the Plaintiff smell of alcohol at the time that he was laying on the ground and was being assisted.

[11] Given that this case arise out of a road traffic accident, whilst the vehicle was under operator, the question of delictual responsibility is to be decided in pursuant to Article 1383(2) of the Civil Code of Seychelles Act. This Article provides that "*the driver of a motor vehicle which by reason of its operation causes damage to a person or property shall be presume to be at fault and shall accordingly be liable unless he can prove that the damage was solely due to the act of a third party or an act of God external to the operation or functioning of the vehicle. Vehicle defects or the breaking or failure of any parts of the vehicle shall not be considered as cases of acts of God*".

[12] Article 1383(2) creates a presumption of liability of the operation of a vehicle in instances where a vehicle causes a damage whilst it is being operated. The presumption is a rebuttable one and it's for the Defendant vehicle operator to rebut that presumption.

[13] Accordingly, the Court has to be satisfied of the following. (1) was the Defendant operating a motor vehicle at the time that he caused the damage to the Plaintiff? (2) If he was operating a motor vehicle, did he discharge the rebuttable presumption that lies on him in law by proving that the damage was due to the sole negligent of the Plaintiff or an act of God external to the operation or functioning of the said vehicle?

- [14] In this case it is admitted evidence that the Defendant was operating his vehicle, pick up S13498, when he collided with the Plaintiff at the Roche Caiman road on the 16th of May 2014. Those facts are admitted in the pleadings and in testimony. Therefore, this Court finds that the Defendant is presumed to be at fault and has to rebut this presumption by adducing facts, either in chief or through cross examinations that the Plaintiff was solely negligent and therefore responsible for the accident or that the accident occurred as a result of an act of God.
- [15] I am of the view that the following factors are relevant if one has to consider whether the Defendant has been able to discharge the presumption of fault that lies on him in this case. (1) Whether or not the Plaintiff was drunk at the material time of the accident and therefore acted negligently and recklessly leading to the collision. (2) Whether the Plaintiff acted as a reasonable prudent pedestrian at the material time. (3) Whether the Defendant acted as a reasonable prudent driver keeping a proper like lookout to the other road users and pedestrian at the time of the accident.
- [16] As to the issue of drunkenness of the Plaintiff and its resulting effect on the case, the Defendant makes this as part of his case. In the Defendant's statement of defence he avers that the Plaintiff was at fault and or negligent as he entered the highway while intoxicated. This is denied by the Plaintiff. However, if the Defendant shows that he took all reasonable steps that an operator of a vehicle would have taken in the special circumstances of the case, but that the Plaintiff caused the accident through his inadvertence and negligence as a result of his intoxicated state, the Defendant would be able to reverse the rebuttable presumption that lies on him.
- [17] The evidence of Dr Chetty was not of assistant to the Plaintiff or the Defendant in that regards. He only came to produce to Court the medical report of Dr Abdulhaq. He could only say what was entered on that report. There was no entry of the state of intoxication, if any, of the Plaintiff. He admitted that he had no personal knowledge of the accident and he could not testify about the physical state and demeanour of the Plaintiff at the time that he was admitted at the hospital, after the accident.

- [18] The Plaintiff on the other hand, in his testimony, vehemently denies being intoxicated at the time of the accident though he admitted that he is an occasional drinker. He testified that he drinks with his workmates after work and that they will make monetary contributions and this they will use the contributions to pay for alcoholic drinks.
- [19] On the other hand the Defendant testified that before the ambulance came to get the Plaintiff, the Plaintiff was not unconscious he was talking to the Defendant and told the Defendant that he has some beer at his place for him to drink. According to the Defendant the Plaintiff further told him that he was drinking a bottle of whisky with a friend the day before and that was some left and that on that morning he had gone to his friend's place to finish the bottle.
- [20] He also informed the Defendant that he had talk to the driver that gave him a lift that morning and that he had informed that driver not to leave him on the seaside of this double road as he would not be able to cross the road that morning. He then informed the Defendant that the driver informed him that he had to go and therefore had to drop him off without moving on the other side of the road. According to the Defendant, he knows the Plaintiff for most of his life and when he saw the Plaintiff he was drunk at that time. According to the Defendant the Plaintiff smell of whisky. The Police did a breathalyzer test on the Defendant but did not do so on the Plaintiff no prosecution was brought against the Defendant following this incident. This is the evidence of the Defendant in that aspect.
- [21] The Defendant's witness, Sabrina Laurence corroborated the evidence of the Defendant to the effect that whilst she was helping the Plaintiff just after the accident the latter smell of alcohol. Here, I cautioned myself whilst considering the weight to be given to the evidence of Mrs Laurence, this is due to the fact that Sabrina Laurence is the wife of the Defendant and that there might be possibility of concoction. However, having observed the demeanour of this witness in Court, I am of the view that in that aspect that she was speaking the truth.
- [22] Having scrutinized the evidence, specially the weight to be attached to the Defendant witness evidence. I found the evidence of the Defendant to be more credible on this

issue. The Defendant had known the Plaintiff for most of his life. He knows the Plaintiff by his nickname "Popi". The Plaintiff sister was married the Plaintiff to the Defendant's late brother. The Defendant and his wife was compassionate to the Plaintiff post accident, they stopped they gave him all the necessary assistance on the scene up to the time of him being taken away for hospitalization. The Defendant went on as far as seeing the Plaintiff twice at the hospital and tried to assist him financially. The Defendant account is clear, precise and consistent. I disbelieve the Plaintiff that he was not in a state of intoxication at the material time of the accident.

[23] The Plaintiff had consumed alcohol on that day and he was in a state of intoxication. He drank the alcohol before crossing the road, he drank it at his friend's place. He was aware of his condition and he had asked his driver not to drop off on the seaside of the South bound lanes of the Roche Caiman Highway but that driver motherless dropped him there. Then the Plaintiff took a risk to cross four lanes of cars to arrive on the other side of the Roche Caiman Housing Estate where he lives. He managed to cross the two South bound lanes. He then arrived in the middle where are certain casuarina trees. Thereafter, he attempted to cross the North bound lanes, he crossed the first lane. The Defendant saw him coming, he slowed down not to allow him to cross to the other side.

[24] Having so crossed in front of the Defendant vehicle he went into the left lane and he heard an incoming noise of a vehicle coming fast from the South. The Plaintiff thereafter took a couple of steps back and this is when the Defendant's vehicle collided with him. The Defendant tried to take evasive action by breaking and swerving side way towards the right. However, the front left part of his twin cab hit the Plaintiff and thereby causing him resulting injury which is shown in exhibit PE1. Having been wounded in the accident the Plaintiff in his shock and stupor asked the Defendant to allow him to go to his place for him to drink some more. The sole negligent acts of the Plaintiff as a result of his state of intoxication, caused the accident.

[25] The Court is also of the view that the Plaintiff failed to act as a reasonable prudent pedestrian would have done in the special circumstances of this case. He crossed a four lanes highway. He failed to keep a proper lookout for incoming vehicle whilst he was

about to cross the second lanes. The Plaintiff who live at Roche Caiman was aware that at this junction at this part of the road there was no safe passage to cross and he still took the risk and attempted to cross it. This is proof of his negligence, he failed to act as a reasonable prudent cautious pedestrian would have done in a special circumstances. As to the Defendant he was not driving at an excess speed, he kept a proper lookout for pedestrian, he was breathalysed by the Police and they did not bring any case against him. Having seen the Plaintiff he slowed down and allowed the Plaintiff to cross his lane. He accepted in evidence that you must treat everybody on the road in the same manner and that you expect people using the road, especially pedestrian to be deaf, drunk or even mad and have to exercise caution accordingly. I therefore find that the Defendant acted reasonably prudently at all material time and operated his motor vehicle properly looking out for pedestrian.

[26] In my final analysis, I find after considering all the evidence that the Defendant has managed to reverse the rebuttable presumption of fault on a balance of probabilities. The accident was caused by the sole negligence of the Plaintiff. This being the case, the Court will not go further and consider other issues such as assessment of damages and quantum in this case.

[27] I therefore dismiss the plaint and I award cost in favour of the Defendant.

Signed, dated and delivered at Ile du Port on 28 September 2017

R. Govinden
Judge of the Supreme Court