

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CS 57/2012**

**[2018] SCSC 123**

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Erryl Morel                      Plaintiff

versus

Romeo Simeon                  Defendant

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Heard:            13 January 2017, 27 March 2017, 8 November 2017, Submissions 15 November 2017

Counsel:        Mr. Nichol Gabriel for plaintiff  
                      Mr. Elvis Chetty for defendant

Delivered:      12 February 2018

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**JUDGMENT**

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**M. TWOMEY, CJ**

[1]     In February 2012, the Plaintiff filed a suit against the Defendant claiming SR816, 350 for damages for personal injury arising out of a road accident in which his motorcycle had collided with the Defendant’s car.

[2]     In his statement of defence, the Defendant averred that the accident was caused solely by the negligent actions of the Plaintiff and that he was therefore not liable in damages.

- [3] The matter was taken up by another court but a hearing never occurred. In 2017, this court took up the matter and the trial took place.
- [4] The Plaintiff testified that on 27 August 2011, he was travelling home from work at around midnight on his motorbike, a Yamaha YBR, and was riding along 5 June Avenue. He has no memory of the collision which subsequently occurred but remembers going past Independence House. He lost consciousness and only came to in hospital.
- [5] He spent six days in hospital and a further three days for admission for surgery subsequently. His eyelid had been cut and was stitched back and he had further operations as he could not see clearly. He also sustained injuries to his nose, chest, left arm and leg. The court observed four long lacerations on his chest and a 5cm mark above his left eye.
- [6] He could not walk for over a month and had to undergo physiotherapy for his leg and continued to suffer pain in his leg for about two months during which time he could not walk properly and had to be assisted by his family. He could not work for three months.
- [7] He had been employed as a chef at La Plage Restaurant at the time and earning SR8, 000 basic pay but earned extra as he did double shifts regularly. The restaurant paid him for the three months he was not working.
- [8] An agreement was made with the Defendant on 23 September 2011 in which it was agreed that claims for damages arising out of the accident would be made under the Defendant's insurance policy. However, no money was ever paid to him under the claim.
- [9] In cross-examination, he admitted that the Defendant was acquitted of a criminal charge relating to the accident as the police officer who had investigated the matter had passed away before the criminal trial.
- [10] Inspector Desnousse of the Traffic Section of Seychelles Police produced the accident report prepared by Inspector Malbrook. In that report it is stated that the vehicle driven by the defendant was overtaking an unknown vehicle at the time of the collision with the Plaintiff's motorbike. The conclusion of the report is that the Plaintiff had priority on the road and that the Defendant should have checked for his presence before overtaking.

- [11] Dr. Madhavi Senaratne attended the Plaintiff on his admission to the accident and emergency department of Seychelles Hospital. He had a deep lacerated wound to his face from the “left lateral canthal to the bridge of the nose” together with multiple lacerations to most parts of his body. A CT scan showed brain contusion in the frontal lobes and the left front-temporo parietal region. He also had contusion to his right lung. He was treated and hospitalised for four days.
- [12] He was readmitted on 31 September 2011 and seen by the oral maxillofacial surgeon Dr. Rolando Dedieu Gonzales for “close reduction of NOE type 1 fracture and upper eye lid blepharoplasty” as he was unable to close his eye lid and had a protruding nasal bone. He was again discharged on 3 October 2011. A recent examination confirms sensitivity in the area of the nasal bone but the eye can now close properly.
- [13] The Defendant testified that on 27 August 2011 at around 1a.m. in the morning he was driving his vehicle towards Independence House opposite the Marine Charter building in Victoria when he noticed a van selling burgers. He decided to pull in to buy something to eat but noticed a motorbike travelling in the opposite direction although some 50 – 60 meters away. As he turned into the entrance, he heard a loud “boom”. The motorbike collided with the left side passenger door, which is at the centre of the vehicle but extends to the rear. He denied the statement in the accident report (Exhibit P3) that he was overtaking a vehicle when he collided with the motorbike. He was not consulted about the report being prepared.
- [14] Jean-Claude Juliette, a police officer with the Traffic Department at the time of the incident also testified. He was on patrol on the night and arrived at the scene of the accident. The van had stopped after having veered towards the Marine Charter building and a motorbike was on the ground. The van had a dent towards its rear left side and had been hit with some force. In his view this indicated that the bike had been driving at considerable speed. In cross-examination he agreed that he had not witnessed the accident.
- [15] The parties opted to file written submissions in closing but none were forthcoming from the Defendant.

- [16] In his closing submissions, the Plaintiff has submitted that in terms of liability the Defendant has been unable to rebut the strict liability regime operating for road traffic accidents under Article 1383(2) of the Civil Code. He relied on the authorities of *Labiche and ors v Laporte* [2005] SCSC 32 and *Tirant v Banane* (1977) SLR 219. He stated that there was also evidence to show that he was overtaking another vehicle at the time of the accident. It was also his submission that by agreeing to indemnify the Plaintiff through his insurance policy the Defendant had accepted liability for the accident.
- [17] The authorities of *Labiche* and *Tirant* (supra) relied on by the Plaintiff have no application in the present case as they are authorities for the proposition that a party may not adduce evidence of a fact that is not pleaded. In the present case the Defendant has clearly pleaded in his Statement of Defence that the accident was not caused by his negligence but by that of the Plaintiff who drove too fast and did not keep a proper look out.
- [18] However, Mr. Gabriel is correct in his submission that Article 1383(2) establishes strict liability in relation to drivers of motor vehicles. This was firmly confirmed by the case of *Vel v Tirant* (1978) SLR 7. The presumption of liability is rebutted only if the defendant can prove that the damage was solely caused by the negligence of the victim.
- [19] Since the law imposes a regime of strict liability in road traffic accidents for the owners of motor vehicles, and both parties were such owners, although the presumption of liability is raised against both of them (*Jumaye v Government of Seychelles* (1979) SLR103) the question arises as to which of them can rebut the presumption.
- [20] Further, as I stated in *Sullivan v Magnan* (CS134/2011) [2016] SCSC 491 with respect to contributory negligence:
- “Vel v Tirant* (1978) SLR 7 and *Gonsalvez v Wilson* (1978) 202 further established the apportionment of fault under the principles of contributory negligence and *Laramé v Antoine* (1982) SLR 456 that the presumption of strict liability was rebuttable but it was up to the Defendants to so do.”
- [21] Having heard the testimony of the parties and their witnesses and having examined the documentary evidence admitted and in view of the law as expounded above, I am of the

view that the Defendant was to blame for the collision with the Plaintiff. Although I do not see enough evidence to make a finding that the Defendant was overtaking a vehicle at the time of the accident and no eye witnesses testified to that fact, the fact remains that he was in the path of the motorbike and not on his side of the road. It is my considered opinion that the Defendant took the exit to the Marine Charter building hoping he would have time for the manoeuvre before the motorbike reached him. It was a calculated risk but the wrong decision.

[22] The dent in the side of the van as indicated by the witnesses in no way amounts to proving any fault on the part of the Plaintiff. When collisions occur between moving vehicles there is an expectation that there will be dents in the vehicles involved in the collision. It is true that dents and damage might be more extensive if there is speed involved but there is no evidence adduced to the effect that the damage to the van would have been less if the bike had been travelling at a lesser speed. There were no eyewitnesses.

[23] Further, the agreement by the parties (Exhibit P1) in which it was agreed that all claims arising from the accident would be made under the Plaintiff's insurance policy although not an admission of fault on the part of the Defendant does however allow for an inference of liability on his part. He has failed to rebut this inference or explain fully the circumstances in which the agreement was made.

[24] In terms of the Defendant's acquittal in the Magistrates Court of a charge relating to the accident, I have previously explained (see *Marie and ors v Cafrine* (unreported) CS 64/2012) that an acquittal on a criminal charge does not have the same evidentiary impact on a subsequent civil proceeding as a conviction has and it does not estop an issue in a subsequent proceeding. I also stated that the specific wording of the provision of section 29 of the Evidence Act also makes it clear that the probative value accorded to a conviction does not apply to an acquittal of a defendant. The Defendant's acquittal in the Magistrates' Court cannot therefore be relied on to exonerate his liability in the present case.

[25] Given all the circumstances above I find therefore that the Defendant was liable for the collision.

- [26] In terms of quantum, some comparative awards for disfigurement and permanent cosmetic disability was provided through the authorities of *Ernesta v James and ors* CS 8/2004 where a total of SR60, 000 was awarded, *Labonte v Mathiot and anor* CS192/2003 where SR80, 000 was awarded and *William v Joseph and anor* C.S 299/2010 in which the Plaintiff was awarded SR160, 000.
- [27] Counsel for the Plaintiff, further submitted that present awards should reflect present day purchasing power of money and an increase in awards made should ensue. In this respect he submitted recent awards, namely those in *Dodin v Geers* CS80/2015 (SR700, 000) and *Mathiot v SPTC and anor* CS64/2012 (SR650, 00 minus 25% for contributory negligence) were more realistic figures.
- [28] The Plaintiff has claimed damages for loss of earnings from 24 August 2011 to 25 October 2011 at SR8, 000 a month. In view of the fact that he testified that the hotel paid him for the time he was laid off because of his injury the court cannot indemnify him twice and I therefore grant no award in this respect.
- [29] The Plaintiff has claimed SR500, 000 for his personal injuries and another SR300, 000 for moral damage. Previous authorities on disfigurement are dated and do not reflect the present standard of living. In *Dingwall v. Dick & S.P.T.C.* (C.S. 207 of 1995), the sum of SR15, 000 was granted for pain and suffering and SR30, 000 for the deformity. In *Ernesta v James and Others* (8 of 2004) [2005] SCSC 39, SR35, 000 was awarded for disfigurement and permanent cosmetic disability. SR 25,000 was awarded for pain and suffering. In *Magnan v Lucas & Ors* (2002) SLR 123, a sum of SR45, 000 was awarded. In *Pillay vs Labaleine* (CS 211/2007) [2014] SCSC 23 a global award of SR300 000 was made to a woman although Karunkaran J inflated the sum because of his personal views of women being the weaker sex which were remarks made *per incuriam*.
- [30] In terms of personal injuries, I accept that the Plaintiff suffered pain and after initial treatment had to return to hospital for further surgery. I believe SR150, 000 would sufficiently compensate him. As regards moral damage I award him a further sum of SR100, 000. He is also entitled to the SR350 fee charged for the medical report.

[31] I therefore award the Plaintiff the total sum of SR250, 350 together with interests and costs.

Signed, dated and delivered at Ile du Port on 12 February 2018.

**M. TWOMEY**  
Chief Justice