

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS No. 147 of 2012

[2018] SCSC 194

LAUREEN LABROSSE

Plaintiff

versus

RONNIE BONIFACE

Defendant

Heard: 22nd March, and 27th October 2016; 24th July and 22nd November 2017

Counsel: Mr. N. Gabriel for the Plaintiff
Ms. E. Wong for the Petitioner

Delivered: 27th day of February 2018

JUDGMENT

Govinden S-J

- [1] This Judgement arises out of a Plaint of the 15th November 2012 filed by Lauren Labrosse (“Plaintiff”) against Ronnie Boniface (“Defendant”).
- [2] The hearing took place on the afore-mentioned dates and after hearing both Learned Counsels as mentioned above, filed written submissions on behalf of the respective parties and of which contents have been duly considered.

- [3] For the purpose of this Judgement, the following are the relevant factual and procedural background to the pleadings.
- [4] In her Complaint, the Plaintiff alleges that on 12th October 2011, Defendant was driving a Nissan vehicle (No. S 6788) and collided with her causing her injury. Plaintiff alleges that she was transported to the hospital and had to undergo lengthy treatment in the hospital for a surgery on her right tibia.
- [5] Plaintiff alleges further, that Defendant is bound to make good on her loss and damages OR in the alternative, is liable for negligence for not paying sufficient attention to the road and failing to take the necessary steps to avoid colliding with the Plaintiff. Plaintiff prays for Seychelles Rupees Seven Hundred Thousand Three Hundred and Fifty (SCR 700, 350/-) which she has particularized as follows namely, Pain and Suffering in the sum of Seychelles Rupees Five Hundred Thousand (SCR 500, 000/-), Medical Report Seychelles Rupees Three Hundred and Fifty (SCR. 350/-) and Moral Damages (inconvenience, anxiety, distress, lack of amenities, depression, disfigurement) for Seychelles Rupees Two Hundred Thousand (SCR 200, 000/-).
- [6] In his Defence, Defendant avers that the Plaintiff suddenly ran out to cross the road and failed to notice his car. In so doing, he contends that she collided with his front passenger door. He maintains that he was driving within the speed limit and practicing caution; and he avers that Plaintiff was negligent for failing to ensure that the road was clear before crossing.
- [7] At the hearing, Plaintiff testified and called three witnesses namely Doctor Murphy Chetty, Roddy Philoe and Armand Freminot and Defendant testified in support of his Defence (*supra*).
- [8] Doctor Murphy Chetty, an orthopedic surgeon, testified on 22nd March 2016, that he made a Report on 24th May 2012 regarding Plaintiff (*Exhibit P2*), but did not examine her. He testified that Plaintiff was examined at casualty on 12th October 2011, where it was determined that she had a leg fracture meaning a broken bone. He indicated that Plaintiff was operated on 10th April 2012 on her right leg, tibia area.
- [9] Dr. Chetty testified further, that Plaintiff was after her accident was discharged on 14th October 2011 and re-examined again several times. He testified that she had to walk on crutches and was referred for special assistance due to mental disorder. When examined again on 21st December 2011, he testified that the fracture was uniting. He testified that when a fracture is not uniting, the patient will feel pain.
- [10] However, on the 8th February 2012, he testified that an x-ray revealed that the fracture was not uniting properly. And he testified that on 7th March 2012 her pain was better, however, the fracture was not uniting. Given the mal-union, she was re-examined again on 29th March 2012 and they advised her to do surgery to remove the mal-union. He testified that on 10th April 2012 they operated her and she was discharged on 17th April 2012, after a week of antibiotics and physiotherapy.

- [11] Doctor Chetty additionally testified that she was given painkillers and analgesic, and that her mother was given six weeks off to stay with her. On 26th April 2012, she was re-examined and he testified that the wound was getting better; she was again examined on 23rd May 2012 and he testified that she was improving and that the staff were satisfied as to the success of the operation.
- [12] The Plaintiff on the 22nd March 2016 testified that she was born in 1986 and that on the 12th October 2011 date of the accident, she was coming down from Pointe Larue. As she was standing on the grill next to Tropical Rum building, Defendant hit her in his car and the wheel ran over her foot, which broke her leg. She testified that he hit her and did not even come to pick her up and a lady came to pick her. She testified that she was transported to the hospital and was still conscious.
- [13] She testified further, that it still hurts to walk, but that she can walk normally like any person.
- [14] On 27th October 2016, on cross-examination, Plaintiff testified that she was standing on the said grill near the road waiting to cross the road so that she could bring some groceries to an old man who had sent her to the shop. She testified that she was aware that there was a zebra crossing about five minutes away. She testified that there was no zebra crossing where she was. She testified that she did not see the car try to avoid her and that it was coming at a fast speed.
- [15] She agreed with Defendant's Counsel upon cross-examination, that after being hit, part of her body fell on the road and the lower part was on the grill. When asked to explain why only her right leg was broken, when she had testified that both of her legs had been run over, she testified that: *"I felt a pain in the other leg but it was not grievous."* She later testified that there was no pain in her left leg, only her right. She testified that the car hit her in the front and the wheels ran over her.
- [16] Roddy Philoe an eye witness to the accident on the 27th October 2016, testified that, on the date of the accident (supra), he saw Plaintiff standing on a grill looking both sides to see if there were any cars coming, and suddenly Defendant's car came up. He testified that Defendant was riding with another person seated next to him. He testified that he was not going at a high speed, but was not focused on the road. He testified that the left side window of the car hit the girl, she fell, the car went over her leg and the Defendant's car just kept on going. He indicated that her right leg was on the road and that he did not see her left leg. He testified in that light that: *"When he reached the distance just before the Kannus Shop, a Mr Freminot who was driving a big truck stopped him and told him that he had hit someone and that is when he reversed and he came back."*
- [17] He further testified that he assisted the Plaintiff and stopped a man passing by and he transported her to the hospital. On cross-examination, he testified that he did not see Defendant trying to avoid Plaintiff or go on the other side of the lane. He testified that

Defendant was looking for something between the seat and that if the Plaintiff had been hit with the bonnet it would have killed her.

- [18] Armand Freminot on his part, on 27th October 2016, testified that, he was driving a big truck on the day of the accident and that he saw a car swerving on the side that was not driving properly. That the car was not going straight and that it was going towards the gutter. Mr. Freminot testified that Plaintiff was standing on the grill watching to cross the road and then the car hit her; he does not know how she was hit. He testified that he signaled for the driver to stop and told him he had hit someone. He testified that she was not on the road when hit; nothing was on the road. He testified that he did not recognize the driver in Court, but that he knew the passenger, the singer one Janah.
- [19] Further, on the on 27th July 2017, on cross-examination, Mr. Freminot testified that he did not know what part of the vehicle hit her whether the front or the side, but that she was hit on the grill. He testified that the car was not driving fast but at a reasonable speed. When asked what the driver told him after stopping him, he replied; *“I could not remember clearly but he might have told me that that person was in the middle of the road and I told him back that if that person was in the middle of the road why you not stopped.”*
- [20] The Defendant on 27th July 2017, testified that, on the day of the accident Plaintiff was standing on the grill between the Tropical Rum Distillery and Kannu’s Supermarket, and that when half of his car had already passed her, she made an attempt to cross the road and that at that exact time she was hit with his left passenger door and rear view mirror. He testified that he does not recall hitting her because the damage to his car was on the side, but that she was actually crossing the road and he tried to avoid her.
- [21] He testified that he stopped himself after the accident, but does recall Mr. Freminot telling him that he had hit the girl.
- [22] On cross-examination, he testified that his phone was not in his hand and that both hands were on the steering wheel. He insisted that he was not driving on the grill. He testified that he has never received a police Report regarding the incident nor been told that he was being prosecuted.
- [23] I will now address the legal standards and its analysis based on the evidence led in this matter.
- [24] Article 1382 of the Civil Code (Cap 33) (“Civil Code”), provides in its most relevant part that:

“Every act whatever of man that causes damage to another obliges him by whose fault it occurs to repair it.

Fault is an error of conduct which would not have been committed by a prudent person in the special circumstance in

which the damage was caused. It may be the result of a positive act or an omission.”

- [25] Courts interpreting the notion of ‘*faute*’, have found that it is an error of conduct, which emanates from the breach of a duty of care. (Reference is made to **[Pierre (born Timonina) v Attorney-General & Ors [2008] SCSC 34]**). Additionally, the precise nature of the ‘*faute*’ must be proved and the burden of proving it lies on the Plaintiff. Mere conjectures and presumptions are not sufficient. (Reference is made to **[Aithal v Seychelles Breweries Ltd. [2006] SCSC 26]**). And as it is in all civil cases, the burden of proof is one of “*a balance of probabilities*” and not the higher standard of “beyond a reasonable doubt” applicable in criminal cases. (Reference is made to **[Marengo & Ors v Anderson [2016] SCSC 44]**).
- [26] In instant matter, the Court must determine whether Plaintiff has proven on the balance of probabilities that Defendant breached a duty of care such that it caused her injuries and, if so, whether she has successfully proved her alleged damages (supra).
- [27] As to the liability of the Defendant, I find on the basis of the evidence led by the Plaintiff and eye witnesses on the scene of accident on the 12th October 2011 (supra), and which evidence withstood very strenuous cross-examination, that the Defendant did fail to drive prudently on the public road within the tenets of *a reasonable driver* hence breach of his duty of care in that, swerving on the public road and by driving on the grill being on the side of the road where the Plaintiff was standing to observe the traffic before crossing the road, the Defendant failed to sufficiently pay attention to road users and pedestrians the like of the Plaintiff and he thus failed to the necessary steps to avoid a collision against the Plaintiff. And to make matters worse, the Defendant failed to stop after hitting the Plaintiff by his very lack of duty of care in safeguarding the interests of other road users.
- [28] With respect to the damages arising as alleged as a result of the liability of the Defendant with respect to breach of his duty of care as a driver as proved, I now move on to determine whether the Plaintiff proved the alleged injuries and whether she is entitled to her claim of damages and it is noted at this juncture that assessment of damages in same and similar tort cases are to be compensatory and not punitive (*Reference to the matter of [Jacques v Property Management Corporation (2011) SLR 7]*)
- [29] I find in that regards, that the evidence of the Plaintiff and Doctor Chetty prove on a balance of probabilities, that, the Plaintiff did suffer multiple injuries as a result of the accident resulting in multiple surgeries more particularly of the right tibia (*Exhibit P2*). Plaintiff testified of pain and suffering suffered at the time of the accident and the aftermath and even currently being felt and the doctor did testify of pain being existant upon non-uniting of the bone and as to complaints of pain by the Plaintiff. I find thus, that the Plaintiff has proved that she suffered pain and suffering arising as a result of the accident. However, I consider the quantum as sought to be on the high side hence I award the Plaintiff on that count the amount of Seychelles Rupees Two Hundred Thousand (SCR. 200,000/-).

- [30] As to the heading of moral damages, it is trite that moral damages are intangible and neither material nor corporal and in that regards I consider the evidence of the Plaintiff that as testified that inconvenience was caused to her being herself a mentally handicapped person in terms of anxiety and distress which is clearly the after effects of the nature of the injuries suffered and trauma arising out of such accidents. However, I find that no evidence has been led to the required standard as to loss of amenities, depression and disfigurement of the Plaintiff in that she did testify herself that albeit some pain still, she is walking like a normal person does. Hence it follows that under the latter Head, no award is made. I however, award on the former head of moral damages as explained, the amount of S.R. 100,000/-.
- [31] Lastly, on the last head of damages Exhibit P2 reveals that a medical Report was released by the Victoria Hospital and produced in Court free of charge and no proof of any fees being paid by the Plaintiff has been adduced as documentary proof, hence claim of Seychelles Rupees Three Hundred and Fifty (SCR. 350/-) has not been substantiated and not granted.
- [32] I thus based on the above findings, award the Plaintiff the amount of Seychelles Rupees Three Hundred Thousand (SCR. 300, 000/-) as damages under the indicated Heads as particularized as against the Defendant and same with interests and costs.

Dated this27th..... day ofFebruary..... 2018.

Govinden S. -J
Judge of the Supreme Court