

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS No. 09 of 2014

[2018] SCSC 337

MIKE YOUNG
Plaintiff

versus

ROY JEAN-BAPTISTE

First Defendant

STEP CAR HIRE REPRESENTED BY

MARISSETTE BRIOCHE

Second Defendant

Heard: 21st November 2017
Counsel: Mr. F. Bonte for the Plaintiff
Mr. N. Gabriel for 1st Defendant
Ms. K. Domingue for 2nd Defendant
Delivered: 28th day of March 2018

JUDGMENT

Govinden S-J

- [1] This Judgment arises out of a Plaint of the 28th January 2014 filed by Mike Young (“Plaintiff”) against Roy (“First Defendant”) and Step Car Hire represented by Marisette Brioché (“second Defendant”) cumulatively referred to as (“Defendants”).
- [2] The hearing took place on the afore-mentioned dates and after hearing all Learned Counsels as above-referred, filed written submissions on behalf of their 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 his Plaint, Plaintiff alleges that on 4th September 2011, he was involved in an accident with motor vehicle (No. S13287) driven by the 1st Defendant. At the time of the said accident, the vehicle belonging to the 2nd Defendant was in operation and it was as a result of its negligent operation by the 1st Defendant that the said accident took place. The Plaintiff avers that since the said accident he has not been able to use his vehicle. In connection with this case, the 1st Defendant was on 26th October 2012, convicted in T. No. 45/12 for the offence of unlawful use of vehicle, negligent driving a motor vehicle with alcohol concentration above the prescribed limit as attested to by (*Exhibit P1*)
- [5] Plaintiff alleges that he has suffered loss and damages for which the Defendants are jointly liable or in the alternative, the 1st Defendant is liable for negligence for not paying sufficient attention to the road and failing to take necessary steps to avoid colliding with the Plaintiff. Plaintiff prays for the sum of Seychelles Rupees Three Hundred and Sixty Seven Thousand and Fifty (S.R.367,050/-) which he has particularized as follows as Cost of labour and materials for repair of the said vehicle at Seychelles Rupees One Hundred and Sixty Seven Thousand and Fifty (S.R. 167, 050/-) and inconvenience and moral damages at Seychelles Rupees Two Hundred Thousand (S.R. 200,000/-).
- [6] The 1st Defendant raised a Plea in limine litis that the Plaint is bad in law and must be struck out because it fails to conform with the provisions of Section 74 of the Seychelles Code of Civil Procedure. In his Defence, the 1st Defendant avers that he was not responsible for the accident and that he was driving at a low speed when the other vehicle driven by the Plaintiff collided against the car he was driving. He further avers that he took proper care whilst driving his vehicle along the said road and that he was not reckless and or negligent. The 1st defendant avers that although he was convicted in 2012 he cannot be held liable in the present case for an offence committed in a criminal matter. The 1st Defendant avers that he is not liable for any loss, damages or at all and that the Plaintiff was contributorily negligent.
- [7] On the merits, the 2nd Defendant raised a plea in limine litis in that the Plaint does not disclose any cause of action against it hence should be struck out. On the merits, the averments of unlawful use and negligence of 1st Defendant’s negligence are admitted and hence denies joint liability as claimed and further avers that the 2nd Defendant was *simply car hire company which hires out vehicles and it has no control on the hirers of its vehicles*

and therefore cannot be held jointly liable with the hirers of any vehicles for any damages caused or loss sustained by third parties.

- [8] At the hearing, the Plaintiff testified on the 21st November 2017, that he was driving his vehicle registration number (S13287) on his side of the road towards Baie St. Anne when a vehicle came towards him on his side of the road with the full light on and hit him. Plaintiff confirmed the vehicle belonged to Steppe Car Hire (S17002) the second Defendant and that Roy Jean Baptiste, the 1st Defendant was driving it.
- [9] The Plaintiff further produced to the Court a copy of Judgment against the 1st Defendant *Exhibit P1*. The Plaintiff went on to explain the state of his vehicle after the accident, in that it was badly damaged. He testified that he had to purchase spares for reparation and was waiting for the money, the consideration sum submitted in a quotation for repair of car S13287 (*Exhibit P2*) amounting to Seychelles Rupees One Hundred and Sixty Seven Thousand and Fifty (SR 167,050/-). Plaintiff further testified that he was claiming the sum of Seychelles Rupees Two Hundred Thousand (SR 200,000/-), for inconvenience and moral damages.
- [10] Upon cross-examination the Plaintiff testified that the accident happened early morning so it was dark but that the road was very clear. That he was going to Baie St. Anne Praslin jetty to drop off passengers and that he was driving on his side of the road. That he was not drinking and that when the collision happened his car had already stopped. He testified that the 1st Defendant moved his car from the accident scene.
- [11] Plaintiff testified that he called both the police and the owner of the Car Hire being the second Defendant and the 1st Defendant was arrested because he was drunk. Plaintiff stated he himself was made to undergo the alcohol test and he was not found to be drunk and was released later on
- [12] When asked about the payment for the spares, the Plaintiff stated that he made a quotation of repair but made no payments for them and that his car is still on Praslin but that he is not using it.
- [13] When confronted about the liability of the 1st Defendant, the Plaintiff stated that the 1st Defendant pleaded guilty in Court and that he has to pay for the damages.
- [14] The Plaintiff agreed with the 2nd Defendant's Attorney that Step Car Hire had no contract and link with him and that she is not liable towards him. However, he stated that since the 2nd Defendant was the owner of the car, it could have taken more consideration for what had happened to him. Later, Plaintiff stated that he still felt like a claim could be made against Step Car Hire because it was the company's car involved in the accident.
- [15] Plaintiff testified that he was not paid by the Insurance on the grounds that the driver was drunk and the only way for him to get back the money was through a civil case in Court and he agreed that there was no imputation in the Plaintiff regarding any negligence as far as the 2nd Defendant is concerned.

- [16] In re-examination, it was confirmed by the Plaintiff that he was suing Step Car Hire the 2nd Defendant because the vehicle that hit and damaged his belonged to Step Car Hire. He later testified that the 1st Defendant pleaded guilty for driving negligently and under the influence of alcohol.
- [17] Ms. Marisette Brioche on behalf of the second Defendant testified that on the 4th September 2011, she was received a call early in the morning letting her know that one of her vehicle had been in an accident on the road going to the jetty. She testified that upon her arrival here, she saw Roy Jean-Baptiste, the 1st Defendant, and not Kenneth Jean-Baptiste in the car. She was shocked as to why that was the case because she had rented the car to Kenneth Jean-Baptiste
- [18] She testified that when the Police asked her what to do with the car she told them to leave it there because she would have come back to pick it up later.
- [19] She testified further, that a couple of days later, she met the Plaintiff and his girlfriend and he enquired about arrangements made to repair his damaged vehicle. She testified that she was not responsible for payment because she was not the one who caused the accident.
- [20] The 2nd Defendant testified that all of the front and the airbag were damaged on her vehicle and that reparation was done solely with the company's money.
- [21] She testified that the Plaintiff did not write her any request to make payments to them or that she is liable towards them for the accident. She maintains however that, she is not liable towards the Plaintiff for any liability or negligence whereby she has to compensate him together with Roy Jean-Baptiste.
- [22] The 2nd Defendant testified that *Exhibit D1*, was a contract stating that the vehicle involved in the accident was rented to Kenneth Jean-Baptiste and not Roy Jean-Baptiste. She testified also that at the back of the documents were attached copies of quotations for the spare parts for the car and garage.
- [23] She testified that she tried to call Kenneth Jean-Baptiste to try and recuperate money but when she did not hear from him she filed a case against him. She confirmed that there was a Judgment against Kenneth Jean-Baptiste whereby, her, her lawyer, Kenneth Jean-Baptiste and his lawyer agreed that he would pay the sum of SR 30, 000.
- [24] Upon cross-examination, the 2nd Defendant testified that there was a quotation from Kim Koon for spare parts and reparations amounting to Seychelles Rupees Two Hundred and Twenty Four Six Hundred and Twenty Five (SR 224, 625/-).
- [25] When asked about how damaged both cars were, she stated that she did not get a good look at the Plaintiff's car because she was busy wondering why Roy Jean-Baptiste was in her car. She stated that since her car was damaged in the front she would think that after collision both cars would be next to each other. She testified that her car was parked away from the accident.

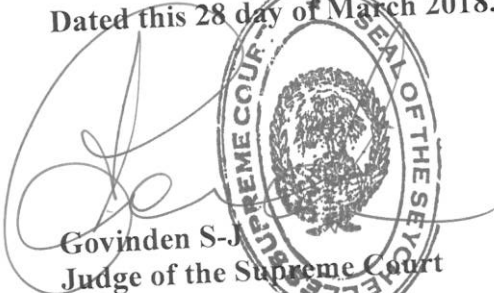
- [26] The 2nd Defendant testified further upon cross-examination, that a *Self Drive Hire Agreement* was signed by her and Kenneth Jean-Baptiste being, “*Self drive Hire Agreement, Hiring Agreement on the 3rd September 2011 between Marisette Brioche of Step Car Hire here after called the owner of the part and Mr. Jean Baptiste of Anse Aux-Pins.*”
- [27] As to the mention of only Mr. Jean-Baptiste in the agreement she clarified that it meant Mr. Kenneth Jan Baptiste and that if the 1st Respondent was allowed as co-driver then same would have been expressly provided which was not the case.
- [28] It was further testified by the 2nd Defendant that she sued Roy Jean-Baptiste for damaging her car since he was not the one she hired her car to but that Roy Jean-Baptiste has not paid her any money until now.
- [29] As to the signature on the Agreement, she testified that they normally put only the signature and it was that of Kenneth Jean-Baptiste, that Kenneth was called after the accident and informed that when he woke up he had found the car keys missing and that Kenneth Jean-Baptiste was not party to the criminal case brought against Roy Jean-Baptiste where he pleaded guilty.
- 30] I will now address the legal standards and its analysis based on the relevant evidence illustrated above.
- [31] Article 1383 of the Civil Code of Seychelles (“The Civil Code”) provides that:
“Every person is liable for the damage it has caused not merely by his act, but also by his negligent or imprudence.”
“The driver of a motor vehicle which, by reason of its operation, causes damage to persons or property shall be presumed to be at fault and shall accordingly be liable unless he can prove that the damage was solely due to the negligence of the injured party or 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 its parts, shall not be considered as cases of an act of God.”
- [32] The 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 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**]). Further, it is trite that in a civil case, the burden of proof is one of “*a balance of probabilities*” and not the higher standard of “*beyond a reasonable doubt*” found in criminal cases. (Reference is made to [**Marengo & Ors v Anderson[2016] SCSC 44**]).

- [33] In the present case, the Court must determine whether Plaintiff has proven on the balance of probabilities that the Defendants breached a duty of care such that it caused damages as claimed (supra) and, if so, whether he has successfully proved his damages by way of evidence adduced as illustrated (supra).
- [34] With respect to the second Defendant's liability which is part of the plea in limine litis and the defence on the merits cumulatively, the Plaintiff alleged in his Plea that both the 1st Defendant and the 2nd Defendant were jointly liable for the loss and damages he suffered. The Plaintiff stated in his evidence that the 1st Defendant was liable for the accident which happened on 4th September 2011. At the time, the 1st Defendant was driving the 2nd Defendant's vehicle S17002, and the Plaintiff was driving his own vehicle, S13287.
- [35] In that light it is also trite that the owner of a vehicle incurs no liability unless the owner was at the material time the driver except under the provisions of Article 1384 of the Code. Ownership of a car is partly evidence that at the material time the car was driven by the owner or by the owner's servant or employee and that presumption could be applied under Article 1382 of the Code. (Reference to *(Low v Beaufond (1979) SLR 118)*).
- [36] It transpires on the evidence that during the course of the accident both vehicles were damaged. The Plaintiff admitted during his cross-examination by the 2nd Defendant's Attorney that he could not impute any liability to the 2nd Defendant save for the fact that the vehicle in question belonged to the 2nd Defendant.
- [37] The 2nd Defendant gave evidence in Court stating that she had rented out the vehicle in question to one Kenneth Jean-Baptiste and not to Roy Jean-Baptiste the 1st Defendant.
- [38] Now, a person whose car is used without permission cannot be liable as the master of the person who uses the car. (Reference is made to *(St Jorre v. Bouchereau (1980) SLR 99)*).
- [39] It follows therefore, as a direct result that the 2nd Defendant cannot be found liable for the damages caused by the 1st Defendant who was solely and admittedly negligent. The 2nd defendant played no part as the agreement pertained to Kenneth Jean-Baptiste and did not extend to the 1st Defendant, Roy Jean-Baptiste.
- [40] On that very basis as analysed, the 2nd Defendant's plea in limine litis succeeds as well as her defence on the merits.
- [41] With respect to the liability of the 1st Defendant's liability, upon scrutiny of the evidence, the Court finds that it indicates proof that the 1st Defendant drove negligently and that this caused damage to Plaintiff's vehicle.
- [42] With regards to contributory negligence as alleged by the 1st Defendant, there is a discrepancy with regards to the 1st Defendant's written submission and the Plaintiff's evidence. The 1st Defendant stated that the Plaintiff admitted that he was using the right side lane on the road when he was supposed to be on the left lane and that is when the accident happened. The Plaintiff vehemently contested that he was on the right side of the

road throughout his examination in chief and cross-examination and that the 1st Defendant was on the wrong side of the road. Furthermore, the Plaintiff testified albeit driving fast prior to the accident, he had already stopped his vehicle before the accident happened. Since the Plaintiff was consistent throughout his explanation as to explaining the way the accident occurred, the Court dismisses the claim of contributory negligence in the circumstances.

- [43] The Plaintiff requests loss and damages arising out of the negligence of the 1st Defendant in the sum of Seychelles Rupees One Hundred and Sixty Seven Thousand and Fifty (SR 167,503/-) for cost of labour and material damages for repair of the his vehicle, and Seychelles Rupees two Hundred Thousand (SR 200, 000/-), for inconvenience and moral damages.
- [44] In line with evidence of proof of the first leg of claim as referred for labour and material damages based on the contents of (*Exhibit P2, Pro Forma Invoice from Kim Koon Motors*) I hereby award damages for cost as claimed in the sum of Seychelles Rupees One Hundred and Sixty Seven Thousand and Fifty (SR 167,503/-).
- [45] With regards to the inconvenience and moral damages, it is noted at this juncture that assessment of same and similar damages in tort cases are to be compensatory and not punitive (*Reference to the matter of (Jacques v Property Management Corporation (2011) SLR 7)*). Further, it is trite that moral damages are intangible and neither material nor corporal.
- [46] I find in that regards, that based on the evidence of the Plaintiff proving inconvenience through loss of use of his vehicle and trauma caused due to the accident to date that the sum as claimed is considered to be on the high side, hence I award the Plaintiff on that count the amount of S.R. 50, 000/-.
- [47] I thus based on the above findings, enter Judgment in favour of the Plaintiff as against the 1st Defendant in the sum award Seychelles Rupees Two Hundred and Seventeen Thousand and Fifty (S.R. 217, 050/-) as loss and damages under the indicated Heads as particularized and same with interests and costs.
- [48] Further, the Plaint is dismissed as against the Second Defendant for reasons given.

Dated this 28 day of March 2018.


Govinden S.J.
Judge of the Supreme Court

