

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CA 04/2017**

**Appeal from Magistrates Court Decision 21/2016**

**[2018] SCSC 497**

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Dr. Ludmila Marie                      Appellant

versus

Darel Pillay                              Respondent

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Heard:                      8 March 2018  
Counsel:                      Ms. Lucie Pool for appellant  
                                    Respondent unrepresented and absent.

Delivered:                      28 May 2018

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**JUDGMENT**

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**Twomey, CJ**

**Background**

- [1]     The Appellant sued the Respondent in the Magistrates Court following a road traffic accident for the sum of SR 59, 037 for associated costs arising from the damage to her car together with SR35, 000 for moral damage.
- [2]     The Respondent accepted liability for the collision. The Respondent's insurers, H. Savy Insurance, paid the Appellant the sum SR440, 962 for the total loss to her vehicle. No

money was paid for associated costs, namely insurance (SR26, 937), road tax (SR3750), underseal (SR 3,800), and rental of an alternative vehicle during the period the Appellant waited for the insurance company to pay the damages.

[3] The learned Magistrate in deciding the issue of quantum found in favour of the Appellant in the sum of SR 34,950 for the car rental but deducted the sum of SR 12,000 which amount he found that her insurer had already awarded her. He did not award her damages for the cost of the car insurance, road tax and underseal which he found unproven. He also awarded her the sum of SR5, 000 for moral damages.

### **The Appellant's grounds of appeal**

[4] Aggrieved by the learned Magistrate's decision, the Appellant filed four grounds of appeal, namely:

1. The learned magistrate failed to consider all the evidence placed before him with regard to associated costs incurred by the Appellant as a result of the accident in which her new car was a total write off.
2. The learned magistrate's computation of the car hire costs based on the receipts produced was inaccurate.
3. The learned magistrate was wrong not to allow the cost of road tax and insurance which are required to be paid by law and formed part of the loss incurred by the Appellant.
4. The learned magistrate should not have deducted SR12, 000 from the car hire cost in view that there was no evidence that the insurance company paid the Appellant's car hire bills.

[5] These grounds of appeal all relate to the fact that a reduced award to what was claimed for car hire costs was granted by the learned magistrate and to the fact that no award was made for other associated costs relating to the car.

### **The Court's consideration of the appeal.**

[6] The Appellant has submitted that since the only issue before the learned magistrate was the quantum of damages to be awarded and since the insurer had indemnified the appellant for the total loss of the car, she ought to have recovered the ancillary costs associated with the car.

[7] In any case, she submits, the Respondent having accepted liability for these ancillary costs, the learned magistrate should have awarded them on the evidence adduced by the Appellant.

[8] As regards the costs of underseal, insurance cover and the road tax, I am of the view that despite the absence of documentary evidence, given the fact that the learned magistrate did not make a negative finding on the credibility of the Appellant these costs should have been granted on the strength of her testimony. I am strengthened in this finding given the fact that these expenses were not challenged by the Respondent.

[9] As concerns the car hire costs, the matter is a little more complicated. The learned Magistrate found that that the car hire costs of SR 34,950 was proved by the Appellant. He went on to deduct the sum of SR 12,000 from that sum on the basis that the Appellant:

*“...received SR12, 000 from the insurer to cover part of this cost.”*

[10] There is documentary evidence to his effect, a contract for car hire with Mein's Car Hire for the sum of SR 12,000 with H. Savy entered on it as the customer. Further, in her own testimony the Plaintiff admitted that SR 12,000 was paid by the insurance company for the car hire. She cannot be doubly indemnified. On this basis the learned magistrate cannot be faulted for deducting that amount.

## **Decision and Order**

[11] In the circumstances, the appeal is partly allowed. I order that the Respondent pay the sum of SR 34,487 to the Appellant. The whole with costs.

Signed, dated and delivered at Ile du Port on

M Twomey  
Chief Justice