

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2019...] SCSC ... 648
CS 32/2018

In the matter between:

JUSTIN ETZIN
(rep by Mr. Chang-leng)

Plaintiff

and

SACOS INSURANCE COMPANY LIMITED
(rep by Mr. K. Shah)

Defendant

Neutral Citation: *Etzin Justin v Sacos Insurance Company Limited* (CS 32/2008) [2019]
SCSC 648

Before: Andre J

Summary: Declaration – Breach of contractual obligations - Householder's
Insurance Policy

Heard: 8th April 2019

Delivered: 26th July 2019

ORDER

The plaint is partially granted. Both parties shall bear their own costs.

JUDGMENT

ANDRE J

Introduction

[1] This Judgment arises out of a Plaint of the 9th March 2018 as filed on the 16th March 2018 (as amended on the 12th February 2019), wherein Justin Etzin (“Plaintiff”), prays that this Court orders SACOS Insurance Company Limited (“Defendant”) for a Declaration that

the Defendant's failure to pay the insured sums to the Plaintiff is in breach of its obligations under the Householder's policy; an Order that the Defendant pays to the Plaintiff the insured sums of Seychelles Rupees Eleven Million Seven Hundred and Twenty Three and Eight Hundred (S.R. 11,723,800.00/-) being the accepted reinstatement cost for the private house of the Plaintiff situated on parcel T 2142 ("dwelling house") and the sum of Seychelles Rupees Four Hundred and Fifty Eight and Five Hundred (S.R.458,500.00/-) for the contents of the dwelling house to the Plaintiff; an Order that the Defendant pays interest on the insured sums from the time of the acceptance of contractual liability for the claim with costs and any other Order that the Court seems appropriate in the circumstances.

- [2] The Defendant by way of statement of defence of the 11th June 2018 (*as amended on the 13th February 2019*), admits the Plaintiff's dwelling house was insured at Seychelles Rupees Eleven Million Seven Hundred and Twenty Three and Eight Hundred (S.R. 11,723,800/-) and that a fire caused some damage to the dwelling house and its contents, but not total destruction as alleged or at all and claims that the Plaintiff is only entitled to a sum of Seychelles Rupees Six Thousand Four Hundred and Two and Four Hundred (S.R. 6,402,400/-), which is the estimated sum to restore the dwelling house in that the Defendant claims that the fire was not fortuitous having regards to all the circumstances of the case surrounding the fire.

Factual and procedural background

- [3] The Plaintiff Justin Etzin was at all material times the owner of the dwelling house (*supra*). His dwelling-house was insured by the Defendant, SACOS Insurance Company Limited under the Householder's Policy for the sum of Seychelles Rupees Eleven Million Seven Hundred and Twenty Three and Eight Hundred (S.R. 11,723,800/-) and the contents of the dwelling house where also insured for the sum of Seychelles Rupees Four Hundred and Fifty Eight and Five Hundred (S.R.458,500.00/-). On 20th December 2015, the dwelling house caught fire and both the dwelling house and its contents were destroyed.
- [4] On the 22nd December 2015, the Plaintiff submitted an insurance claim to the Defendant for the insured amounts under the Householder's Policy. The Defendant has agreed to pay out the sum of Seychelles Rupees Four Hundred and Fifty-Eight and Five Hundred

(SR 458, 500.00/-) to the Plaintiff for the insured household contents. The Defendant negotiated to pay out an amount less than the insured amount for the dwelling house and after a series of discussions the Plaintiff and the Defendant failed to reach an agreement.

[5] It is against this background that the Plaintiff filed this action before the Supreme Court for the Defendant to pay the total value of the insured sum in addition to loss and damages resulting from the Defendant's breach of contractual obligations.

[6] As per his Complaint (*supra*), the Plaintiff is requesting for the Court to issue a Declaration that the Defendant breached its obligations arising under the Householder's Policy by failing to pay the insured sums hence an Order for the Defendant to pay the Plaintiff the full insured sums with interest, an Order that the Defendant pay all the expenses incurred by the Plaintiff since the fire which amounts to Seychelles Rupees One million (SR 1,000,000.00/-) and loss of income and moral damages amounting to Seychelles Rupees Two Million Five Hundred and Sixty (SR 2,560,000.00/-) and Seychelles Rupees (SR 100,000.00/-) respectively and an Order for the Defendant to pay exemplary and punitive damages to the Plaintiff for its wilful and continuing refusal to honour its obligations under the Householder's Policy. The total amount claimed is in the sum of Seychelles Rupees Fifteen Million Eight Hundred and Forty-Two Three Hundred and Thirty (SR 15, 842,330.00/-) (*supra*).

[7] The Defendant admits and accepts that under the terms of the Householder's Policy, it is liable to indemnify the Plaintiff against loss and damage to his dwelling house caused by the fire. However, the Defendant contends that the Householder's policy is a policy of indemnity, which seeks to cover the cost of refurbishing the damaged part, and not necessarily the insured sum. In their statement of defense, Defendant avers that the cost of refurbishing the damaged part of the dwelling house amounts to Seychelles Rupees Six Million Four Hundred and Two and Four Hundred (SR 6,402,400.00/-), which is the sum they were offering to pay to the Plaintiff but he refused.

Evidence

[8] At the hearing, the Plaintiff testified and called two witnesses namely, Michel Mathew Bristol and Harish Pattel and the defendant called one witness Mr. Marc D'offay.

- [9] On his part, the Plaintiff testified that he purchased the dwelling house in the year 2010 and it was insured with the Defendant as per the Householder's Insurance Policy of the 16th February 2015 renewed on the 15th June 2015 (*Exhibit P1*).
- [10] That the sum insured was of Seychelles Rupees Eleven Million Seven Hundred and Twenty Three Eight Hundred and Thirty (*S.R. 11,723,830/-*), with a further insurance of Seychelles Rupees Four Hundred and Fifty Eight and Five Hundred (*S.R. 458,500/-*) for the contents of the dwelling house and which date of validity was for the 7th June 2015 to the 15th June 2016 for the total amount.
- [11] That the Defendant sought an up to date valuation for insurance purposes and the same was furnished to the Defendant (*Exhibit P3*) of the 1st April 2014 confirming the insured amounts.
- [12] The Plaintiff further testified as to the state of the dwelling house and its contents as insured through the production of (*Exhibit P5*).
- [13] Plaintiff testified further that on the 20th December 2015, the dwelling house caught fire when he was in Seychelles and he had been in the dwelling house in the morning before the fire occurred.
- [14] He testified that on the fateful date, he was the same morning, in the dwelling house with his wife and his wife was due to meet some friends for a photoshoot session and shortly after he left the house at around 11 am for the beach at Intendance which beach is not far from his dwelling house, he had been there for around two to two and half hours, when he received a phone call from a neighbor that his dwelling house was on fire and he rushed to the dwelling house and found no dwelling house for same which was built out of wood was completely destroyed.
- [15] He testified further, that at the time he left he dwelling house, there was nothing unusual observed in the dwelling house and its condition was the same as on any other day and he was in total shock on coming back home to see its state. Photographs revealing the complete destruction of the dwelling house was produced as (*Exhibit P11*) and plaintiff testified that nothing survived the fire and at the time the householder's insurance policy was valid.

- [16] After the fire, a claim was filed with the Defendant for the loss as attested by (*Exhibit P6*) for the sums insured (*supra*) and also a fire brigade report was furnished to the Defendant (*Exhibit P7*) revealing that the “*cause of the fire is recorded as of doubtful origin.*”
- [17] The Plaintiff further testified that a statement of himself as to the incident was furnished to the Defendant (*Exhibit P8*) and a full list of all furniture and contents of the dwelling house prior to the fire and all items destroyed by the fire.
- [18] That the Defendant reverted back to the Plaintiff several months after the filing of the claim through a series of e-mails (*Exhibit P9*) and on the 18th November 2016, the author of the e-mails one Ms. Faure accepted the claim on behalf of the Defendant and made an offer of only 50% of the amount insured and same was not accepted by the Plaintiff giving rise to the Plaintiff.
- [19] The Plaintiff further produced quotation from the construction company Hari Builders (Pty) Limited of the 3rd August 2017 (*Exhibit P12*) attesting to the amount of Seychelles Rupees Fourteen Million Seven Hundred and Thirty Two Five Hundred and Thirty S.R. 14,732,530/-) quoted for the rebuilding of the dwelling house and its demolition and same excluding 15% tax (*VAT*).
- [20] Plaintiff testified that as of the date of the hearing, the land on which the dwelling house was constructed is just grass and remains the demolished remains of the said dwelling house and this was done once SACOS accepted liability and the site was cleared within a period of two months after.
- [21] The clearing was conducted by a local neighbor who had the building equipment at a favorable rate of payment.
- [22] That he had to pay all additional rental expenses for renting of a house, hotel accommodation after the fire and when visiting Seychelles pending the payment of the insurance. That he is unable to rebuilding his dwelling house and as a result has led to the loss of income for he used to rent his dwelling house out to agencies when he was away and dwelling house empty.

- [23] The Plaintiff further testified that the non-acceptance of his claim by the Defendant affected him in that he had been living in his said dwelling house for around 5 years prior to the incident for same is his base in Seychelles and he has been unable to rebuild. That when he comes to Seychelles as part of his work and vacation which is about three times a year he has to rent a house and hotels for friends and family members latter who also use to stay at his dwelling house.
- [24] The Plaintiff hence claim loss of income also for he claimed that he lost rental for bookings for two to three years but he could not produce receipts of his travels and bookings and or rentals to the said agencies and reason given for their absence is because according to the Plaintiff all emails and requests had been deleted.
- [25] Upon cross-examination, the Plaintiff admitted to refusing the offer of the Defendant and denied instructing his attorney to receive payments of the initial offer pending the rest of the balance.
- [26] It was testified that in his opinion the whole house was made of wood and admitted of lack of records for loss of income.
- [27] Michel Mathew Bristol, a licensed engineer project coordinator for Public Utilities Corporation (*PUC*) testified that he compiled a report as to the damages caused to the dwelling house of the Plaintiff dated the 17th February 2017 (*Exhibit P10*). (*Exhibit P11* features the photographs of the site.
- [28] That a breakdown of the Report in gist provides that the dwelling house was completely destroyed and what remains cannot be used for reconstruction. It was explained that as per (*Exhibit P10*), the type of the dwelling house frame structure was of steel and padded timber cement and since steel structure is not readily available in Seychelles the reconstruction of the dwelling house would have to include importing of same and the value of the imported materials are high.
- [29] Mr. Bristol further testified that the quotation by *Hari builders* was on the high side but he acknowledged that he was not specialized in estimations.

- [30] He reiterated that the dwelling house was completely destroyed and has to be reconstructed. It was further testified that the results of the fire were catastrophic and due to weather exposure the remainder of the steel has been exposed and deteriorated.
- [31] Upon cross-examination, Mr Bristol testified that the extent of the damage observed upon his site visit was on more than 300 square meters of the area of land and he would slightly disagree with the report of Marc D'offay (*Exhibit D1*) as to the extent of the damage.
- [32] Harish Pattel manager of *Hari builders*, testified that his company had been in the construction industry for around 12 years and conducted projects of housing at Perseverance and the like.
- [33] Mr. Pattel testified with respect to the quotation provided by his company (*Exhibit P12*) for the project at Takamaka of the 12th August 2017, that the quote was based on a completely destroyed dwelling house and to be rebuilt for the Plaintiff.
- [34] He testified further that steps are undertaken prior to quotation incorporated site visits and discussions with the engineer, advance demolition and quotation to demolish and reconstruction and all came up to Seychelles Rupees Fourteen Million Seven hundred and Thirty-Two Five Hundred and Fifty and Cents Forty-Eight (*S.R. 14,732,550.48/-*).
- [35] It was further testified that the furniture required was of ballow timber which can only be acquired from North America, Brazil or Malaysia and quotation took note of importation costs for the timber is expensive and none of the materials were available in Seychelles local market.
- [36] Mr. Pattel reiterated that the quotation given by his company was accurate based on experience and in line with general prices and not extraordinary.
- [37] It was further testified that as at the date of the hearing, the cost of reconstruction of the dwelling house would be more than the amount quoted in about 8 to 10 percent more and the quotes will have to be updated accordingly.
- [38] It was further testified that granite rock construction which was required for the reconstruction is expensive.

- [39] Upon cross-examination, Mr. Pattel testified that reconstruction entailed all cement blocks and timber works and included both local and imported materials.
- [40] It was testified that there was no steel frame requested as per plans but cement and the cading material balow timber. That the quotation also included plumbing, electricals and the quotation was based on the drawing as provided to his company by the client.
- [41] Mr. Pattel testified further, that he would not be aware if details on the plan they gave a quote upon were not on the original burnt dwelling house and or original plans and that the rate used to calculate the reconstruction was between 10,000 to 5000 per square meters at the time.
- [42] Mr Pattel confirmed he knew one Mr. Marc D'offay being an engineer and reiterated that their measurements of the area of the destroyed dwelling house was of 360 and not 300 as provided by the latter named engineer.
- [43] Upon re-examination, Mr. Pattel clarified that steel is always included in concrete and confirmed that the quotation provided by his company was accurate and truthful for the reconstruction of Plaintiff's dwelling house and due to the lapse of time since the last quote an updated one had to be done.
- [44] Marc D'offay a civil engineer, testified on behalf of the Defendant that he had been an engineer since the year 1983 and practicing continuously in Seychelles in various projects inclusive of hotels and housing.
- [45] That he was well versed with the building cost in Seychelles.
- [46] That in December 2015 the Plaintiff's dwelling house was damaged by fire and he was requested by the Defendant to visit and value the damage caused and he prepared a short report upon his site visit (*Exhibit D1*) of the 29th December 2015.
- [47] It was testified that according to his report, the cost estimate is provided. That he used a copy of the architect's report to compile his report from which he received some information about the said fire which damaged the dwelling house.
- [48] Mr. D'offay testified further, that in terms of the square meters of the dwelling house, around 300 was measured and was required, the reconstruction of the basement, ground

floor, figure for the demolition of debris on-site and the prices were inclusive of plumbing and basic electrical works.

- [49] M D'offay testified that the house design was like a frame structure lightweight steel members padded with different kinds of woods and even having a gypsum board at several places and that steel frame structure is not common in Seychelles and reinforced by a concrete structure.
- [50] He testified further, that advantages of steel are that it was faster to put up but as to longevity and durability block concrete is better and the difference in price is evidence in that the latter is more expensive.
- [51] That his estimation was of Seychelles rupees Five Million Five Hundred and Seventy-Seven and Five Hundred (*SR 5,577,500/-*) and same at a rate of 15,000 per square meter based on the steel structure and that in his opinion his estimation was fair as an assessment of cost.
- [52] He further testified that the estimate dates back to 2015 and that it could be used to reconstruct in 2019.
- [53] Commenting on (*Exhibit P12*) being the quotation of ***Hari builders*** (*supra*), Mr. D'offay testified that the estimate in his opinion was for a bigger house than what was in existence prior to the fire destruction.
- [54] Upon cross-examination, Mr D'offay testified that he visited the site a week after the fire and he visited the site alone and he observed a total loss and he was not really aware of the original state of the house.
- [55] Mr. D'offay further testified upon cross-examination, that the Plaintiff's house was unique in form and shape prior to the fire and that he obtained information from the Defendant and plans in their possession and also the square meter area of the house.
- [56] He further confirmed that he did not take into consideration extensions carried out on the dwelling house in the year 2013 by the Plaintiff and would not know its extent.
- [57] The witness further testified that the architect is the best person to state the extent of the dwelling house.

Legal analysis and Discussion of evidence

[58] Having illustrated the salient evidence pertinent to this matter, I shall now move on to the applicable law and its analysis thereto.

[59] The first issue for determination is whether under the circumstances the Plaintiff is entitled to the insured sum of Seychelles Rupees Eleven Million Seven hundred and Twenty Three Eight Hundred and Thirty (*SR 11, 723, 830/-*) arising under the Householder's Policy. The relevant part of the Householder's Policy obligating the Defendant to enforce the policy provides that:

“NOW WE THE COMPANY agree to pay or make good to the Insured's Executors or Administrators all loss or damage and to indemnify the Insured against all such liability and costs which he or they may from time to time sustain by any one or more of the perils insured after such loss and or damage and/or liability are proved”.

[60] In their written submissions Learned Counsel for the Defendant submitted that since there is no special legislation covering contracts of insurance in Seychelles, the Court has established that English law is applicable to insurance cases and reference is made to the case of (*Marc Didon v Provincial Insurance Company Limited (1980 SLR 93)*).

[61] The Defendant avers that the Plaintiff is only entitled to recover the amount of his loss and not the full insured sum and quoted the ruling of the Court of Appeal in (*Leppard v Excess Insurance Co. Ltd [1976 WLR 1485]*), which held that:

“Ever since the decision of this court in Castellian v Preston (1883) 11 Q.B.D 38, the general principle has been beyond dispute. Indeed I think it was beyond dispute long before Castellian v Preston. The insured may not recover more than his actual loss. As it was put by Brett L.J. in Castellian v. Preston at p.386:

“In order to give my opinion upon this case, I feel obliged to revert to the very foundation of every rule which has been promulgated and acted on by the courts with regard to insurance law. The very foundation, in my opinion, of every rule which has been applied to insurance law is this, namely, that the contract of insurance contained in a marine or fire policy, is a contract of indemnity only, and that the contract means that the assured, in a case of loss against which the

policy has been made, shall be fully indemnified, but shall never be more than fully indemnified. This is the fundamental principle of insurance, and if ever a proposition is brought forward which is at variance with it that is to say, or which will give to the assured more than a full indemnity, that proposition must certainly be wrong”.

- [62] The Defendant’s witness civil engineer Marc D’Offay testified that he was asked by the Defendant to visit and evaluate the damaged site to produce a report. Mr. D’Offay’s expert opinion is that it would cost Seychelles Rupees Five Million Five Hundred and Seventy-Seven (SR 5, 577, 000/-) to rebuild the dwelling house. Under cross-examination Mr. D’Offay admitted to not having seen the house before it was destroyed by the fire and that the information he used to produce his report was given to him by the Defendant.
- [63] However, Learned Counsel for the Plaintiff made a crucial point which is that in 2013, the Plaintiff made alterations and amendments to increase the size of the dwelling house and thereafter in 2014, the Plaintiff’s architect produced a reinstatement evaluation of the house at Seychelles Rupees Eleven Million Seven Hundred and Twenty Three Eight Hundred and Thirty (SR 11,723, 830/-). Mr. Marc D’Offay under cross-examination admitted to not being aware of nor would confirm whether the information provided to him by the Defendant reflected the additional amendments. Furthermore, under cross-examination Mr. D’Offay agreed that the Plaintiff’s architect was best placed to make a valued judgment in evaluating the dwelling house.
- [64] The evidence clearly reveal that the insurance contract on the dwelling house was worth Seychelles Rupees Eleven Million Seven Hundred and Twenty Three Eight Hundred and Thirty (SR 11, 723, 830/-). The evidence also reveals that the house was completely destroyed by fire. However, both parties disagree on the cost of rebuilding the dwelling house.
- [65] On one hand, the Defendant is claiming that it would cost Seychelles Rupees Five Million Five Hundred and Seventy-Seven (SR 5,577,000/-), to rebuild and the Plaintiff has submitted that **Hari Builders** provided a quotation for Seychelles Rupees Fourteen Million Seven Hundred and Thirty-Two Five Hundred and Fifty and Cents Forty-Eight (SR 14,732,550.48/-) to rebuild.

[66] The court in (*Leppard v Excess Insurance Co. Ltd [1976 WLR 1485]*) held that:

“the insured may not recover more than his actual loss”

And therefore since the dwelling house was completely destroyed, it stands to reason that in order for the Plaintiff to recover his actual loss he is entitled to be paid the full insurance money namely Seychelles Rupees Eleven Million Seven Hundred and Twenty Three Eight Hundred and Thirty (*SR 11, 723, 830/-*) and not the Seychelles Rupees Fourteen Million Seven Hundred and Thirty-Two Five Hundred and Fifty and Cents Forty-Eight (*SR 14,732,550.48/-*) quoted to rebuild by *Hari Builders*. This is also in line with the court’s ruling in the case of (*Lau Tee v Provincial Insurance Co Ltd (1975)*) which held that:

“the loss or damage which the plaintiff is entitled to be indemnified by the defendant company under the policy is the value of the loss or damage actually suffered by the plaintiff to his house at the time of and as the result of the fire and not a sum equal to the replacement or reinstatement of his said damaged property”.

[67] I turn to the second question to be decided. Plaintiff is claiming Seychelles Rupees One million (*SR 1,000,000.00/-*), for all the expenses he has incurred since the fire. The relevant part of the Householder’s Policy that deals with additional costs are paragraph 12 thereof which provides:

“ADDITIONAL COSTS up to twelve months of alternative accommodation necessarily incurred by the Insured as occupier if the Buildings are rendered uninhabitable by any of the insured perils, NOT EXCEEDING 10% of the Sum Insured of the building(s) damaged or destroyed or Rps.20,000 whichever is the lower”.

[68] The insurance policy makes provision for the Plaintiff to claim expenses incurred from seeking alternative accommodation. The Plaintiff testified that has been using hotels and renting houses whenever he visited Seychelles. In principle, according to the insurance policy he can claim up to 10% of the Seychelles Rupees Eleven Million Seven Hundred and Twenty Three Eight Hundred and Thirty (*SR 11, 723, 830/-*) for seeking alternative accommodation, which I assume is how he derived the figure Seychelles Rupees One million (*SR 1,000,000.00/-*). However, the Plaintiff has failed to satisfactorily prove and justify spending Seychelles Rupees One million (*SR 1,000,000.00/-*) on alternative

accommodation within a twelve-month time period. As such, the Court has no choice but to default to the figure of Seychelles Rupees Twenty Thousand (SR20, 000.00/-) outlined in the Householder's Policy as the lower of the two figures.

- [69] The third issue to be considered involves the Plaintiff's claim of Seychelles Rupees Two Million Five Hundred and Sixty (SR 2,560,000.00/-) as loss of income from renting out the house. The relevant part of the Householder's Policy that caters with loss of rent is paragraph 11 which provides that:

"LOSS OF RENT which the Insured is unable to recover in consequence of the Building becoming uninhabitable following damage caused by any of the insured perils".

- [70] Learned Counsel of the Defendant rightly submitted that a license is needed to rent out the house as stipulated by section 20 (1) (a) of the Licences Act 2010, which provides that:

"Notwithstanding anything in any other Act, no person shall (a) engage in or carry on any activity, profession, trade or business specified in the Schedule; (b) keep or manage any premises specified in the Schedule, except under and in accordance with a license granted by the Authority".

The Plaintiff has failed to provide evidence that he had a license to carry out this activity. Under these circumstances the legal maxim, *"He who comes to equity must come with clean hands"* as upheld by the Court in *(Searles v Pothin (Civil Appeal SCA 07/2014) [2017] SCCA 14)* applies. Therefore, without evidence to show that the Plaintiff had a valid license to rent out his dwelling house, his claim for loss of rental income fails accordingly.

- [71] I now address the fourth issue. In the amended plaint the Plaintiff is alleging that he has suffered damage because of the Defendant's refusal and/or failure to pay the Insured Sums and breach of the Householder's Policy and is thus claiming Seychelles Rupees One Hundred Thousand (SR100, 000.00/-) for moral damages.

- [72] In that light, Article 1384 of the Civil Code of Seychelles ("*Code*") makes direct provision for the recovery of damages outlining that:

“A person is liable for the damage that he has caused by his own act but also for the damage caused by the act of persons for whom he is responsible or by things in his custody”.

[73] Article 1149 (2) of the Code further provides that:

“Damages shall also be recoverable for any injury to or loss of rights or personality. These include rights which cannot be measured in money such as pain and suffering and aesthetic loss and the loss of any amenities of life”.

[74] While it is evident that the Defendant is not responsible for causing the fire, however, the evidence provided before the Court does show that the Plaintiff has suffered moral damage for being inconvenienced as a result of the failure of the Defendant to adhere to the terms of the Householder’s Policy in a timeous fashion.

[75] The issue before the Court thus, is deciding whether Seychelles Rupees One Hundred Thousand (*SCR100, 000.00/-*) requested by the Plaintiff is a fair amount? The Court in the case of (*Cable and Wireless v Michel (SLR 1966 253)*), highlighted the difficulties of assessing moral damages.

[76] Article 1153 of the Code provides that:

“With regard to the obligations which merely involve the payment of a certain sum, the damages arising from delayed performance shall only amount to the payment of interest fixed by law or by commercial practice; however, if the parties have their own rate of interest, that agreement shall be binding”.

[77] In their written submission, the Defendant argues that they are liable to pay “4% per annum as from the date on which the *Plaint* was filed, namely 16th March 2018”.

[78] It follows thus based on the above legal reasoning that the Plaintiff is entitled to 4% per annum of the interest from the amount the Defendant was supposed to pay him.

[78] Lastly, I address the fifth issue. The Plaintiff is requesting that the Court issue an Order for the Defendant to pay exemplary and punitive damages to the Plaintiff for its wilful and continuing refusal to honor its obligations under the Householder’s Policy.

[79] Addressing the issue of exemplary damages, the Court of Appeal stated in the case of *(Michel v Talma (2012) SLR 95)* held that:

“Apart from the fact that exemplary damages should be specifically pleaded, it should be awarded only in cases falling within the following categories:

(a) oppressive, arbitrary or unconstitutional action by servants or the Government...”

[80] The criteria for exemplary damages is clear. The Plaintiff does not fall under the criteria laid out in *Michel v Talma case*.

Conclusion

[81] Based on the above analysis, the Plaintiff has provided sufficient evidence for the Court to issue a declaration that the Defendant breached its obligations arising under the Householder’s Policy by failing to pay the insured sum and the Defendant is ordered to pay to the Plaintiff the full insured sums Seychelles Rupees Eleven Million Seven Hundred and Twenty Three (*SR 11, 723, 830.00/-*) with interest.

[82] The Defendant is further ordered to pay to the Plaintiff Seychelles Rupees Twenty Thousand (*S.R. 20, 000.00/-*) outlined in the Householder’s Policy for expenses incurred by the Plaintiff since the fire.

[83] Defendant is further ordered to pay moral damages based on the figure of 4% per annum interest as from the date on which the Plaintiff was filed, that is the 16th March 2018.

[84] No Order for loss of income is granted.

[85] No Order for exemplary and punitive damages is granted either.

[86] It follows that the plaintiff is partially granted and both parties shall bear their own costs.

Signed, dated and delivered at Ile du Port on 29th July 2019.

