

SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 733
CA 38/2017
Arising in CS 263/2014

In the matter between:

JASON EMMANUEL CHARLES
(rep. by Nicole Gabriel)

Appellant

and

K [REDACTED] F [REDACTED]
a minor represented by his legal guardians

Respondent

[REDACTED] and [REDACTED]
(rep. by Joel Camille)

Neutral Citation: *Charles v F [REDACTED]* CA 38/2017 arising from CS 263/2017) [2019] SCSC 733
(4th September 2019)
Before: Pillay J
Summary: Appeal
Heard: By way of submissions
Delivered: 4th September 2019

ORDER

Appeal is allowed.

JUDGMENT

PILLAY J

[1] The background facts of the case are that the Plaintiff, now Respondent, was injured in a road traffic accident at the English River School on 21st December 2012. The Defendant,

now Appellant, was the driver of vehicle number S1875. The Plaintiff claimed and the Court below accepted that the Defendant hit the Plaintiff as he crossed the pedestrian crossing in the vicinity of the English River Secondary School. The Plaintiff was taken to the hospital where he was examined and late released. The Plaintiff's attorney wrote to the Defendant on 5th March 2013 seeking damages. The matter was subsequently heard by the Magistrates' Court and an award of SCR 32, 000/- was made in favour of the Plaintiff.

- [2] On 21st November 2017 the Learned Magistrate delivered the judgment in favour of the Plaintiff. At paragraph 7 of the judgment the Learned Magistrate's finding is that "... I am satisfied that the defendant is liable for the accident as he was driving his motor vehicle negligently at the material time. The defendant is also vicariously liable to compensate the plaintiff for the actual loss and damaged the latter suffered."
- [3] The Learned Magistrate proceeded to award SCR 20, 000/- for pain and suffering, SCR 5, 000/- for anxiety, stress and depression as well as SCR 700/- for the medical report. The Learned Magistrate went on to award the sum of "SCR 32, 000/- [in total] in favour of the plaintiff with costs of the action."
- [4] The Appellant being dissatisfied with the judgment given and award made by the Learned Magistrate in the Court below, now appeals against the judgment.
- [5] The grounds of appeal are as follows:
- a) *The learned Magistrate erred in entering judgment against the Appellant against the evidence adduced during the hearing.*
 - b) *The learned Magistrate erred in entering judgment against the Appellant despite the clear evidence of the witnesses pointing to the negligence of the Respondent.*
 - c) *The learned Magistrate erred in finding the Appellant vicariously liable to compensate the Respondent for the actual loss and damages the latter suffered.*
 - d) *The learned Magistrate erred in awarding the sum of 32, 000 Rupees to the Respondent, a sum which does not correspond to the award of each of the headings namely pain and suffering, anxiety, stress and depression and the medical report.*

The Appellant's submissions.

- [6] With regards to ground 1 Counsel for the Appellant submitted that the evidence clearly established that on the material date the Appellant was driving from Victoria to Glacis when the accident happened contrary to the Learned Magistrate's finding that the jeep was coming from Glacis to Victoria.
- [7] With regards to ground 2 Counsel for the Appellant submitted that the evidence of Sergeant Doudee who was directing traffic was that he suddenly saw a young boy running across the zebra crossing. According to Sergeant Doudee he ran after him but was unable to prevent him from being hit. Counsel argued that the Learned Magistrate did not consider these points in evidence and instead entered judgment against the Appellant.
- [8] With regards to ground 3 counsel submitted that the finding of the Learned Magistrate that the Appellant was vicariously liable for the accident is not supported in law. Counsel submitted that the Appellant had not been in the employment of an employer nor the agent of a principal but was the owner of his own vehicle. It was counsel's submission that the said finding rendered the whole judgment defective.
- [9] With regards to ground 4 counsel submitted that the award of SCR 32, 000/- does not correspond to the awards made under each heading by the Learned Magistrate. Counsel prayed for this Court to quash the judgment imposed by the Learned Magistrate.

Respondent's submissions

- [10] Counsel for the Respondent submitted that the first ground of appeal is too vague and should not be entertained.
- [11] With regards to the second ground of appeal counsel for the Respondent submitted that the said ground is without merit in that the Respondent gave clear evidence that he took the bus into town and was crossing to go to English River School. It was counsel's submission that the Learned Magistrate came to the correct conclusion having carefully considered the evidence.

[12] With regards to ground three and four counsel for the Respondent conceded that the Learned Magistrate was in error in referring to vicarious liability however counsel submitted that that such error was not fatal to the case. It was further counsel's submission that the Appellant had not been prejudiced as a result of the error. As for the global sum of SCR 32, 000/- counsel for the Respondent submitted that the award does not go contrary to the claim.

Decision

Ground 1 - *The learned Magistrate erred in entering judgment against the Appellant against the evidence adduced during the hearing.*

- [13] Mr. Camille for the Respondent submits that the first ground of appeal is too vague and cannot be entertained. This Court agrees that the ground is indeed very vague and does not really say much. However this Court takes note of the submissions of counsel for the Appellant, which were filed on the same date as the Notice and Memorandum, and the submissions explain the error of the Learned Magistrate which counsel relies on in his appeal.
- [14] I note that according to paragraph 2 of the Plaintiff the Defendant was driving in the direction from Glacis to Victoria.
- [15] The evidence of the Respondent at page three of the proceedings though, is that he "took the bus to go to town, I was crossing to zebra crossing close the English River school. I look on right, I could see the black jeep coming. I was crossing on the mountain side crossing to sea side." The Respondent's evidence is indicative of the Appellant driving from Victoria to Glacis since the Respondent saw him coming from the right.
- [16] The Defendant's testimony on 12th September 2017 was that he was "going back to Glacis".
- [17] This Court further takes notice of the contradiction in the evidence of the Respondent. In evidence in chief the Respondent stated he was crossing from mountainside to seaside, effectively from Orion Mall car park to the school. However in cross examination he testified that he was coming from the hospital which effectively means he was crossing

from English River School towards the Orion Mall car park. On the evidence the Learned Magistrate could not have come to a conclusion without addressing the discrepancy.

- [18] This Court agrees with the submissions of counsel for the Appellant that the finding by the Learned Magistrate that the jeep was driving from Glacis to Victoria is contrary to the evidence on record. Accordingly ground 1 of the appeal succeeds.

Ground 2 - *the learned Magistrate erred in entering judgment against the Appellant despite the clear evidence of the witnesses pointing to the negligence of the Respondent.*

- [19] Counsel for the Respondent submits that the Appellant's case that the Respondent was the one who hit against the jeep and got injured is not reflected in the defence nor was it put to the Respondent.

- [20] I note paragraph 2 of the Defence, more specifically the last three lines, "the Plaintiff, who at all material time was, and is still a minor and under no proper supervision of an adult or any person older than him, ran across the road and into the Defendant's car."

- [21] I further note the last line of the Respondent's cross-examination by Mr. Gabriel, "I don't agree that I was negligence but the defendant was negligence."

- [22] Clearly the Appellant's defence was that he did not hit the Respondent but it was the Respondent who ran into the road and into his car and the said defence was put to the Respondent.

- [23] The question however remains – did the Learned Magistrate err in entering judgment against the Appellant despite clear evidence of the Respondent's negligence?

- [24] So was there evidence of the Respondent's negligence or for that matter that of the Appellant?

- [25] The Learned Magistrate found that the Appellant was driving his vehicle negligently but does not go as far as explain how the Appellant's driving was negligent.

- [26] In the Amended Plaint of 23rd October 2014 the Respondent alleged that the Appellant was negligent in that the Appellant:

- (1) *Drove too fast in the circumstances.*
- (2) *Failed to stop and give way on approaching a pedestrian crossing.*
- (3) *Failed to give way on a pedestrian crossing.*
- (4) *Failed to keep any or any proper look-out.*
- (5) *Failed to stop, slow down, steer or otherwise control his vehicle so as to avoid hitting the Plaintiff.*

- [27] One could argue that the finding of the Learned Magistrate that the Appellant was “driving his motor vehicle negligently at the material time” means that she accepted that the Respondent had shown that the Appellant was negligent as alleged in the Plaint. However such argument cannot be accepted in view of the fact that there is not a single piece of evidence that the Appellant was speeding. The accident occurred between 730-8am during peak hours in the presence of two Police Officers. Sub-Inspector Doudee stated that the impact he heard was loud. Neither he nor Sergeant Marengo made any mention of hearing the sound of screeching tyres or any other sounds indicative of speed.
- [28] Furthermore the evidence of the Respondent is that he looked left and saw that a car had stopped for him to cross. He then looked right and he saw the jeep coming. Crossing from mountainside to seaside it was imperative for the Respondent to ensure that it was safe and no vehicle were coming from his right before he started to cross the road. Having seen the jeep he should have ensured it stopped or was slowing down to stop instead of just crossing.
- [29] On that basis this Court accepts that on the evidence the Learned Magistrate could not have come to the conclusion that the Appellant was negligent.

Ground 3 - *the learned Magistrate erred in finding the Appellant vicariously liable to compensate the Respondent for the actual loss and damages the latter suffered.*

- [30] Counsel for the Appellant accepts that the Learned Magistrate was in error in finding the Appellant vicariously liable. However Mr. Camille submits that the said error caused no prejudice to the Appellant. According to Mr. Camille that ground must fail.

[31] As rightly pointed out by counsel for the Appellant there was no basis for the Learned Magistrate's finding of vicariously liability. This Court also agrees with counsel for the Respondent's submission that there is no prejudice caused to the Appellant on the facts.

[32] However the Learned Magistrate being wrong on the finding of vicarious liability this ground of appeal is allowed

Ground 4 - *the learned Magistrate erred in awarding the sum of 32, 000 Rupees to the Respondent, a sum which does not correspond to the award of each of the headings namely pain and suffering, anxiety, stress and depression and the medical report*

[33] I note that the particulars of loss and damages were broken down into three heads in the Plaintiff, being pain and suffering; anxiety, stress and depression; and medical report. Having made an award of SCR 20, 000/- under the head of pain and suffering, an award of SCR 5, 000/- under the head of anxiety, stress and depression and the sum of SCR 700/- for the medical report, a total of SCR 25, 700/- I do not see how the a final award of SCR 32, 000/- in total can be made, contrary to the prior sums found to be just, without any further explanations. This Court cannot accept Mr. Camille's argument that the sum of SCR32, 000/- does not go contrary to the claim. Indeed the claim is for a global sum of SCR 210, 700/-. That global sum is however broken down into specific heads and fixed sums were have been claimed under each of those heads to add up to the total of SCR 210, 700/-. The Learned Magistrate having awarded a sum she found justified in the circumstances under each head could not then round it off to another totally unrelated figure.

[34] That said it is the view of this Court that the said discrepancy under different circumstances could be cured but for the above finding that the Learned Magistrate could not have come to the conclusion that the Appellant was negligent on the evidence.

[35] The role of the appellate Court is not substitute its opinions for that of the trial court. In the case of **Captain of Various Fishing Vessels SCA 23/1997, LC 130** the Court of Appeal explained that "An appellate court will interfere with a lower court's decision only if the judge of first instance –

(a) Misdirected him or herself on matters of principle; or

(b) Failed to take into account important matters, or took into account irrelevant matters;
or

(c) Made a decision that was plainly wrong or wholly unreasonable.

[36] Based on the evidence on record the decision of the Learned Magistrate was wrong.

[37] For the reasons given above the appeal is allowed.

[38] The decision of the Learned Magistrate is quashed in its entirety.

[39] Each side shall bear their own cost.

Signed, dated and delivered at Ile du Port on ... *4th September 2019*

