

SUPREME COURT OF SEYCHELLES

Reportable/Not Reportable / Redact
[2019] SCSC 919
CS68/2016

In the matter between:

MILENA NOURRICE
(rep. by France Bonte)

Plaintiff

and

MICHEL FLORENTINE
(rep. by Anthony Derjacques)

1st Defendant

DAVE PILLAY
(rep. by S. Rajasundaram)

2nd Defendant

H. SAVY INSURANCE CO LTD
(rep. by Alexandra Benoiton)

3rd Defendant

Neutral Citation: *Nourrice Milena v Florentine Michel & Ors* (CS 68/2016) [2019] SCSC 919
(21 October 2019).

Before: Andre J

Summary: Road accident – Damages – Breach of insurance policy conditions – Third Party Insurance Act – Articles 1382 (1) and 1383 (2) of the Civil Code of Seychelles Act (Cap 33)

Heard: 17 July 2019

Delivered: 21 October 2019

ORDER

The following Orders are made:

- (a) The Plaintiff’s Complaint is rejected in relation to the first Defendant;
- (b) The Plaintiff’s Complaint is granted in relation to the second Defendant;
- (c) The Plaintiff’s Complaint is rejected in relation to the third Defendant;
- (d) The second Defendant is to pay to the Plaintiff the sum of Seychelles Rupees Eighty- Five Thousand SR85,000/- in damages, being Seychelles Rupees Eighty Thousand SR80,000/- in damages and Seychelles Rupees Five Thousand SR5,000/- for loss of use.
- (e) Costs and interest are to be paid by the second Defendant.

JUDGMENT

ANDRE J

Introduction

- [1] Milena Nourrice ('Plaintiff') seeks an Order from the Court for damages arising out of a road traffic accident involving a vehicle that she is the registered owner of namely a Hyundai Eon with registration number: S12191 ('the vehicle').
- [2] While the Plaintiff was away overseas, she left the vehicle with Michel Florentine ('first Defendant'), a mechanic, to undertake some repairs. The Plaintiff's vehicle did not have a valid vehicle licence, also referred to as Road Fund License ('RFL'), at the relevant time.
- [3] On 13 December 2015, while driving the vehicle, the first Defendant collided with a pickup, registration number: S25375, owned and driven by Dave Pillay ('second Defendant'). The Plaintiff's vehicle suffered extensive damage. The Plaintiff had a third party insurance policy with H. Savy Insurance Co. Ltd ('third Defendant'). The third Defendant, however, rejected her claim on the basis that she did not have a valid RFL at the time, and that her policy was accordingly void. The second Defendant also had an insurance policy with a comprehensive cover with the third Defendant. The third Defendant refused to pay out for the damage to the Plaintiff's vehicle because it did not have a valid RFL. The Plaintiff therefore brought a claim against the first, second and third Defendant seeking damages and costs.
- [4] The question for determination thus is to determine what party is liable for the damage caused to the Plaintiff's vehicle.
- [5] For the reasons set out below, the Court finds that the accident was the fault of the second Defendant. This was expressly accepted by the second Defendant during the course of the proceedings. As such, the only remaining issue to be determined is the quantum of damages. Various other issues were raised during the proceedings, many of which were not relevant on the basis of the pleadings but are nevertheless addressed in turn for the sake of clarity.

The Plaintiff

- [6] The Plaintiff, dated 20 July 2016, sets out that the Plaintiff left her vehicle with the first Defendant while she was away for medical treatment from 10 to 17 December 2015. The Plaintiff alleges that, during this time, the first Defendant used the vehicle without her authorization and was involved in a road traffic accident involving the second Defendant.
- [7] The Plaintiff lodged a claim with the third Defendant in relation to the accident. The third Defendant, however, refused to meet the claim.
- [8] The Plaintiff claims for the following loss and damage:
- (a) Damages in the sum of SR85 000/-
 - (b) Loss of use in the sum of SR100 000/-
 - (c) Moral damages in the sum of SR200 000/-
- [9] The Plaintiff therefore seeks an Order from this Court that the Defendants pay the Plaintiff the Seychelles Rupees Three Hundred and Eighty-Five Thousand SR385,000/-, being the sum of the alleged damages (supra), with costs and interest.

The Defence

- [10] The Statement of Defence for the first Defendant, dated 13 January 2017, admitted that the vehicle was left with him during the period alleged by the Plaintiff for repairs. The first Defendant denies that he drove the vehicle without the Plaintiff's authorization. He notes that he took the car to test its roadworthiness after completing the requested repairs. When doing so on 13 December 2019 the second Defendant, driving the vehicle with registration number S25375, collided with the Plaintiff's vehicle. The first Defendant claims that the accident was the fault of the second Defendant. The first Defendant further avers that he purchased spare parts and carried out repairs on the vehicle at his own cost, both prior to and after the accident. He therefore rejects the submission by the Plaintiff regarding the loss and damage suffered and rather alleges that he has suffered substantial loss and damage in respect of which the Plaintiff has failed to reimburse him. He seeks that the Plaintiff is dismissed with costs.

[11] The Statement of Defence of the second Defendant, dated 17 January 2017, alleges that the accident was caused by the first Defendant's 'sole negligence and rash driving of the vehicle S12191'. And further that: *'The first Defendant is solely responsible for the accident and the consequent liability arising out of his negligent driving and out of driving without any valid authority.'* He seeks that the cause of action is dismissed with costs. His statement further claims that the amount sought by the Plaintiff is exaggerated without any logic, and that there is no justification for the claims of loss of use and moral damages. The second Defendant seeks that the Plaintiff's claim against him be dismissed. It is noted that the second Defendant changed his position regarding whose fault the crash was in the course of the proceedings.

[12] The Statement of Defence of the third Defendant, dated 31 January 2016, submits that the company declined to entertain the claim of the Plaintiff because the Plaintiff was in breach of clause 6 and 7(h) of the General Exceptions to liability under the Motor Vehicle Insurance Policy as a result of the vehicle not being in a roadworthy condition at the time of the accident and not having a valid RFL. The third Defendant therefore maintains that it is not liable to the Plaintiff in any sum at all and seeks that the suit is dismissed with costs.

The Evidence

[13] During the hearing on 6 February 2018, the first, second and third Defendants gave personal answers in relation to the accident of 13 December 2015.

[14] On personal answers, the first Defendant confirmed that he is a licensed mechanic and has been for many years. He has a valid driver's license. Consistent with his statement of defence, he confirmed that the Plaintiff gave him her car for repairs while she was away. She gave him Seychelles Rupees One Thousand Seven Hundred and Fifty SR1750/- to buy the spare parts necessary for this. He identified the Plaintiff as his sister. According to him, she used to bring her car to him because he would repair it for a low price as in this case, where he did not charge her for his labour.

- [15] To complete the repairs, he picked up the car from the airport as requested by the Plaintiff and drove it to his garage in La Misere where he repaired the bumper and the water reservoir. On 13 December 2015, he took the car for a test drive. He did not arrange to get a board saying 'on test' from VTS as he did not know that the car did not have a valid RFL. He agreed that he had a duty to check, but he did not. After the crash, he realized that the RFL had in fact expired and that the car did not have a valid RFL.
- [16] In regards to the crash, the first Defendant explained that the crash occurred when the second Defendant was driving from La Misere to Grand Anse in his lane. He had reached the SHTC School going downhill in the left lane. A pickup driven by the second Defendant, was coming towards him on his side of the road. He hooted but the pickup hit him head-on. The Plaintiff's car suffered damage to the cap, bumper, windscreen, guard bow, radiator and air conditioning. The first Defendant was not prosecuted for the accident.
- [17] The second Defendant then gave personal answers. The second Defendant explained that he was on the wrong side of the road when the crash occurred, but that this was because the car in front of him waved for him to overtake. He could see another car coming in the opposite direction but it was far in front. As he pulled out to pass (onto the other side of the road), there was a 'blockage' so he could not get back into his lane. He claimed that when the other car coming towards him saw him, it speed up because he thinks the driver accidentally pressed the accelerator instead of the brakes when he saw him coming. The two vehicles then collided. The second Defendant was also not prosecuted for the accident.
- [18] The second Defendant confirmed that he had a valid driver's license, RFL and comprehensive insurance. While he requested that the third Defendant payout for the damage to the Plaintiff's car, this was refused by the third Defendant.
- [19] A representative for the third Defendant appeared to provide personal answers, Mr Kevin Furneau. He confirmed that the Plaintiff had third-party insurance for vehicle S12191 at the time of the accident with his company. After the accident, she made a claim for the

damage to her vehicle. He explained that the third Defendant refused the Plaintiff's claim because she did not have a valid RFL.

[20] Mr Furneau also confirmed that the second Defendant had a comprehensive insurance policy with H Savy Insurance. The second Defendant reported the accident to the third Defendant. He did not, however, make a claim for the damage to his vehicle but rather paid for the repairs to his vehicle himself.

[21] It was put to Mr Furneau that while the company's contract with the Plaintiff was faulty, the contract with the second Defendant was not. The policy of the second Defendant was a valid contract and it covered damage to third parties. Mr Furneau was therefore asked why the company did not pay the Plaintiff under the Plaintiff's insurance coverage or pay under the insurance cover of the second Defendant. Mr Furneau explained that the Plaintiff's insurance was only third-party, so she couldn't claim for the damage to her own vehicle under her own policy. Therefore, he said that for her to be indemnified, she would need to be paid out on Mr Pillay's policy. But this was not possible because she did not have a valid RFL.

Plaintiff's case

[22] During the hearing of evidence on oath of 8 April 2019, the Plaintiff gave evidence on her own behalf. She testified that she left her car with the first Defendant to fix the bumper when she left for Sri Lanka on 10 December 2015 with her family. She denied that the first Defendant was her brother, noting that *'he said that he is my brother but my mother has never told me that.'* She confirmed that when she left the car at the airport, it did not have a valid RFL and that she did not inform the first Defendant of this. She claimed however that she was unaware that it had expired.

[23] In cross-examination regarding the quantum of damages claimed, she explained that the damages sought include the court costs, lawyer fees, cost for taxis and public transport, and repairs. She confirmed that the car, when she bought it new in 2014 was of Seychelles Rupees Two Hundred Thousand SR200,000/-. The Plaintiff mentioned during cross-examination that she had to take a loan from the bank of Seychelles Rupees Fifty

Thousand SR 50,000/- because of the damage to the car, and that she is still paying this off. She accepted that the first Defendant had repaired the car '*to a certain extent*' following the accident, though she did not accept that the first Defendant had spent money on spare parts for the vehicle.

First Defendant's case

[24] The first Defendant, testified and confirmed that his statements provided during personal answers were true and correct. He confirmed that he had spent money fixing the Plaintiff's car for spare parts after the accident. He presented invoices (Exhibit D1-1) in support thereof.

Second Defendant's case

[25] The second Defendant under cross-examination, confirmed that he accepted fault for the accident. His explanation for the crash is addressed in more detail below.

Third Defendant's case

[26] Finally, the third Defendant through its representative Mr Furneau testified in examination in chief and confirmed that the Plaintiff had made a claim for cover on 17 December 2015 for the accident which was rejected. The claim form was admitted as (Exhibit D3-1).

[27] It was explained that the name of the insured on the claim is Milena Nourrice namely the Plaintiff. The space for the number and date of expiry of the RFL on the form was not filled out. The third Defendant responded on 11 February 2016 denying the claim on the basis that the Plaintiff did not have a valid RFL. In a letter dated 1 June 2016, the Plaintiff acknowledged that she only had third party insurance at the time, though she notes that the accident was the fault of Mr. Pillay the second Defendant, who, she understood, had admitted liability and she noted that he was also insured by the third Defendant.

[28] Mr Furneau, further produced a copy of the insurance proposal signed by the Plaintiff and a copy of the policy with respect to the Plaintiff. Specific reference in this policy was

made to paragraph 6(h) of the insurance policy: *‘The Company shall not be liable in respect of ... (7)(h) all liabilities arising out of the use of the Motor Vehicle unless the Vehicle is duly licenced by the competent authorities.’*

Analysis and findings on the evidence

[29] The Court makes the following findings on the basis of the evidence presented.

[30] Firstly, the Court finds that the Plaintiff did authorize the first Defendant to drive her car while she was away. The reasons for this finding are as follows. The Plaintiff left the vehicle at the airport for the first Defendant to collect in order to undertake the requested repairs. She gave the keys to the first Defendant personally. She had driven herself and her family to the airport in the car. She did not inform the first Defendant that the car did not have a valid RFL, despite knowing that the first Defendant would have to move the car in order to undertake the repairs. Further, while it is not necessary to make a finding as to the nature of the relationship between the Plaintiff and the first Defendant, they are clearly known to each other and both have in the course of the proceedings or on the evidence referred to each other as siblings or half-siblings. In her letter to the third Defendant on 1 June 2016, the Plaintiff notes that: *‘I left my vehicle with my half-brother’*. The Court therefore finds on the balance of probabilities that the Plaintiff gave the first Defendant authority to drive the car for the purposes of making the requested repairs, which included taking the car for a test drive as the first Defendant did on 13 December 2015.

[31] With regard to the accident, the Court finds it was the fault of the second Defendant. This finding is based on the evidence given by the second Defendant himself during personal answers and later confirmed by his evidence on oath, and the evidence of others. During personal answers, the second Defendant explained how the crash happened. In short, he was driving uphill when the car in front of him waved for him to pass. Accordingly, the second Defendant pulled out onto the other side of the road to overtake the car in front of him. He saw the other car coming towards him in the opposite direction but found he could not move back into his lane because there was *‘a blockage, cars were not moving’*. To the left was a precipice. The second Defendant averred during personal answers that

the first Defendant accidentally put his foot on the accelerator rather than the brake in a panic when he saw the vehicle in his lane. However, this was not raised by the second Defendant in the insurance documentation and was resisted by the first Defendant. The Court does not consider there to be sufficient evidence to support this allegation. The two vehicles then collided. After the crash, the second Defendant avers that he informed his insurance company of the crash and how it happened. He noted that he requested that his insurance company pay for the damage to the Plaintiff's car. He was later informed that the insurance company could not pay because the Plaintiff's car did not have a valid RFL.

[32] The second Defendant's account of the crash in evidence (supra) is consistent with what he provided to his insurer, the third Defendant. He stated in his claim form: *'I was traveling to Grand Anse via La Misere. I was overtaking another vehicle and accidentally bump into the other vehicle that was travelling in the opposite direction' [sic]. This is also consistent with the account provided by the first Defendant during questioning and in his insurance claim form in which he wrote: 'I was travelling towards Grand Anse. While taking a bend, vehicle S25375 was overtaking another vehicle and bumped into the vehicle that I was driving.'* (Exhibit D3-1).

[33] Under cross-examination, when the second Defendant was asked whether he was at fault for the accident, he stated that: *'Yes, I accepted'*. His position seemed to be that, despite the accident being his fault, he should not be liable because he has comprehensive insurance cover. The contradictory nature of the second Defendant's statement of defence and oral evidence was put to him by counsel for the third Defendant during cross-examination. He acknowledged what was stated in his statement of defence noting that: *'It is on my paper, it should stand because the document is with you'*. However, when asked whether there was anything else he wanted to say arising out of the questioning, he did not retract his acknowledgment of fault rather focusing on the importance of having one's documents for insurance in order, as he had. No evidence was presented before the Court to suggest that the accident was caused in any way by a defect of the Plaintiff's vehicle arising from not having a valid RFL.

[34] For the foregoing reasons, the Court finds the second Defendant is solely at fault for the road traffic accident involving the Plaintiff's vehicle.

[35] As regards the Plaintiff's insurance policy, the third Defendant testified that prior to the crash the Plaintiff changed her insurance policy from comprehensive insurance to third party insurance. The Court finds on the evidence produced (Exhibit D3(5)), that the Plaintiff only had third party insurance at the relevant time. This was acknowledged in her letter to the third Defendant dated 1 June 2016 and confirmed during her examination in chief. The second Defendant meanwhile had a valid comprehensive insurance policy (also with the third Defendant, H Savy Insurance).

[36] Finally, the Court finds that the Plaintiff's RFL expired on 3 June 2015, and that the vehicle did not have a valid RFL at the time of the accident (Exhibit D3-2).

Legal analysis

[37] During the hearing, it became apparent that the key issues were not as initially presented as per pleadings filed. This primarily owed to the change in position of the second Defendant as regards which party was at fault for the road accident.

[38] The Plaintiff does not provide the relevant article of the Civil Code of Seychelles Act (Cap 33) ("Civil Code") the claim is based on. Article 1382(1) provides: '*1. Every act whatever of man that causes damage to another obliges him by whose fault it occurs to repair it.*' Article 1383 further provides:

1. Every person is liable for the damage it has caused not merely by his act, but also by his negligent or imprudence.

2. 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.

[39] Article 1383(2) applies specifically to road traffic accidents, imposing strict liability on a custodian for injuries caused by an object in his custody or under his control. Liability

can be rebutted by showing that there existed natural events, the intervening act of a third party or the act of the victim himself. (See: **Constance v Grandcourt (CS107/2014) [2016] SCSC 868 (11 November 2016)**). Here, the accident concerned two vehicles. If two motor vehicles are involved in a road accident, both drivers are presumed to be at fault. (See: **Monthy v Ghislain (1978) SLR 51; Jumaye v Government of Seychelles (1979) SLR 103; Attorney-General v Jumaye (1980) SCAR 348; Labiche v Celtel (1983) SLR 139**). The finding of fault on the part of the second Defendant in the present case rebuts the presumption on the part of the first Defendant. The finding of fault on the part of the second Defendant is supported by jurisprudence even without the second Defendant's admission. In the matter of **R v Barbier (1991) SLR 107**, the Court confirmed that: *'It is a basic traffic rule that a motorist faced with a stationary vehicle or other obstruction on his lane of traffic should make sure before encroaching on the opposite lane to overtake that it is absolutely safe to do so. The motorist on the opposite land, in such circumstances, has the right of way.'* In the present case, the second Defendant was at fault for entering the right (opposite) lane to overtake the car in front of him when it was not safe to do so. The first Defendant, who was driving in the opposite direction, had the right of way.

[40] Contributory negligence was not specifically raised in the pleadings. The evidence presented by the second Defendant during the hearing, however, suggested that in the view of the second Defendant the first Defendant was contributorily negligent for the accident by speeding up when he saw the second Defendant pull out into his lane. Having not been raised in the Statement of Defence, it is clear that the defence of contributory negligence is not available to the Defendants (See: **Tirant v Banane (1977) SLR 219**). The Court of Appeal in **Marie-Ange Pirame v Armano Peri SCA 16 of 2005(unreported) (cited in Monthy v Seychelles Licensing Authority & Ano (SCA 37/2016) [2018] SCCA 44 (14 December 2018))**, held that *'this Court did state in (CA 8/97) inter alia that evidence outside the pleadings although not objected to and the relief not pleaded for ..., cannot and does not have the effect of translating the said issues into the pleadings or evidence. Indeed we should reiterate here that the above-quoted views of this Court still remain good law'*. Were that not the case, in any event, the evidence also does not support a finding of contributory negligence. For the first Defendant to be

contributorily negligent, the second Defendant would need to show that the Plaintiff or first Defendant failed to take reasonable care i.e. such care as a reasonable man would take for his own safety, and that this failure was a contributory cause of the accident as held in the *Tirant case*. As noted above, the Court does not consider on the balance of probabilities that the first Defendant accidentally speed up when he saw the first Defendant. The Court therefore does not consider that the first Defendant is contributorily negligent.

[41] There remains the issue of the absence of a valid RFL in respect of the Plaintiff's vehicle. Under the Road Transport Act, 'no person being the owner of a vehicle ... shall drive or permit any other person to drive such vehicle on any road unless the owner shall first have obtained a licence to keep such vehicle under the Licences Act' (section 5). To obtain a vehicle licence (referred to by the parties as a Road Fund Licence, RFL), the owner must provide a certificate of registration, documentation confirming that the vehicle is safe for use on the road, and proof of insurance. A person commits an offence under the Road Transport Act if he or she allows an unlicensed vehicle on the road (section 24(m)). However, the Road Transport Act specifically stipulates that: 'Nothing in this Act shall affect any liability, whether criminal or civil, of the driver or owner of the vehicle by virtue of any law or Act for the time being in force: Provided that no person shall be punished twice for the same offence' (section 29). As a result of the provisions of the insurance policy of the Plaintiff, the absence of a valid RFL meant that the Plaintiff's insurance policy was void. But the Court has not been presented with a reason why the absence of a valid RFL ought to affect the civil liability of the second Defendant under the Civil Code of Seychelles Act (which makes no reference to a vehicle licence) in the present circumstances. As noted above, the Court has found on the evidence that the accident was solely caused by the fault of the second Defendant. No evidence was provided to suggest that the absence of a valid RFL, or a defect of the Plaintiff's vehicle, caused or contributed to the accident. Therefore, the absence of a valid RFL for the Plaintiff's vehicle does not impact on the civil liability of the second Defendant, who committed a fault and caused damage to the Plaintiff's vehicle. This of course does not exclude the possibility that the Plaintiff committed an offence under the Road Transport Act for allowing an unlicensed vehicle on the road.

[42] The Court accordingly finds that the Plaintiff's claim against the second Defendant is made out.

[43] Conversely, the Court dismisses the claim against the first Defendant and the third Defendant. As regards the first Defendant, the Plaintiff authorized him to drive her car and he was not at fault in relation to the accident. As regards the third Defendant, the Plaintiff's Complaint concerned the third Defendant's failure to pay out under her policy with the company. However, her insurance policy only covered third party damage. It cannot therefore cover damage to her own vehicle. Moreover, the policy is void because she did not have a valid RFL as required under her insurance policy.

[44] In the course of the proceedings, after the second Defendant accepted fault, it appeared that the Plaintiff sought to claim as against the third Defendant on the basis of the second Defendant's policy. Her Complaint does not, however, address this and her Complaint was not amended in the course of proceedings. In any case, it would appear that the Plaintiff does not have a right of action against the third Defendant on the basis of its insurance policy with the second Defendant. The case of *Moustache v Guardian Royal Exchange (1980) SLR 87* confirmed that: 'A person injured by reason of another's fault has a cause of action against the person who committed the fault. There is no right of action against the insurer who had undertaken to indemnify the wrongdoer'.

[45] Finally, the Motor Vehicles Insurance (Third Party Risks) Act ("the Act"), was not raised in the Complaint or statements of defence, but only during the hearing and parties' written submissions. For the sake of clarity, if the Plaintiff does have a valid cause of action under this Act, she does not have one at this point in time. As noted in the case of *Madeleine & Ors v H Savy Insurance CS19/2015 [2016] SCSC 428*, a cause of action arising from the Third Party Risks Act only arises once a judgment has been delivered in relation to liability for a traffic accident (see para. 19). It also appears to be limited to instances of personal injury (see section 5(b)). The judgment must be in respect of liability covered under a policy of insurance. (See: *Brutus v Namasivayan Civil Side No. 54 of 2003*).

[46] This is clear from the wording of section 10(1) where it states (emphasis added):

*'If, after a policy of insurance has been effected, **judgment** in respect of any such liability as is required to be covered by a policy under paragraph (b) of section 5 (being liability covered by the terms of the policy) is **obtained against any person insured by the policy** then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons **entitled to the benefit of the judgment any sum payable thereunder in respect of the liability**, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.'*

[47] A judgment in respect of liability has not been issued in the present case. If the Plaintiff seeks to rely on section 10 of the Act to recover damages, she is only able to do so later in time under a separate cause of action. If she does so, she will be suing not under the insurance policy of the second Defendant but under the Act.

[48] All that remains to be determined, therefore, is the quantum of damages.

Damages

[49] Article 1149 of the Civil Code provides that:

4. In the case of delicts, the award of damages may take the form of a lump sum or a periodic payment. In the latter case, the Court may order that the rate of the payments should be pegged to some recognised index, such as the cost of living index or other index appropriate to the activity of the victim.

[50] The Plaintiff seeks damages in the sum of Seychelles Rupees Three Hundred and Eighty-Five Thousand SR385,000 in total. This comprises of damages of Seychelles Rupees Eighty-Five Thousand SR85,000; loss of use in the sum of Seychelles Rupees One Hundred Thousand SR100,000; and moral damages in the sum of Seychelles Rupees Two Hundred Thousand SR200,000.

[51] The Court has several concerns about the damages sought and the evidence (or lack thereof) provided by the Plaintiff. To determine the quantum of damages, the court must consider the evidence and the awards given in comparable cases. (See: **Seychelles**

Breweries v Sabadin SCA 21/2004, LC 278). Awards based on uncertain damage are not permissible and this as clearly held in the case of ***Kilindo v Morel SCA 12/2000, LC 196***.

[52] As regards damage to the vehicle, the Plaintiff provided the following documents in response to a request for particulars regarding the types of damages to the vehicle:

- a. A quote by PMC Spares Ltd for Auto Care Pty Ltd / Milena Nourrice for Hyundai Eon dated 26 December 2015 for SR 22,034.00.
- b. An invoice from Auto Care Pty Ltd dated 21 January 2016 for SR46,192.05 for works completed. This invoice includes 'PMC Spares' costing SR19,160.00. It is unclear whether the invoice incorporates some of the parts quoted in the PMC Spares quote above.
- c. A quote ('vehicle assessment and evaluation') from Steven Kelvin Tirant for Hyundai Eon dated 4 July 2016 for repairs amounting to SR35,000.00. The quote specifically notes 'this is only an estimate and the final invoice may vary'. It includes to 'remove and refit engine'. No invoice is, however, provided.
- d. An invoice dated 8 September 2016 from PMC Spares for SR17,323.70. This was for a 'gasket kit-engine overhaul', and for an 'engine assy-short'. Again, it appears possible that this invoice incorporates the work quoted above.

[53] The sum of the two invoices provided is Seychelles Rupees Sixty Three Thousand Five Hundred and Fifteen and Cents Seventy Five SR63,515.75. No other documentary evidence was provided in respect of the remaining amount of damages claimed namely Seychelles Rupees Twenty One Thousand Four Hundred and Eighty-Four and Cents Twenty Five SR21,484.25, and counsel for the Plaintiff did not cover the issue of damages in any further detail during examination in chief. The Court in the case of ***Low-Ken v Fanny (CA8/2015) [2016] SCSC 726 (06 October 2016)***, highlighted the need to look beyond the estimates and quotes and look at all the evidence before the Court. However,

for reasons set out below, the other evidence does not support the inclusion of the sums included in the quotes provided by the Plaintiff.

[54] The first Defendant provided several invoices for spare parts for the vehicle which were paid by him after the accident. The invoices provided by the first Defendant amount to Seychelles Rupees Sixteen Thousand Three Hundred and Twenty Four and Cents Seventy SR16,324.70 (excluding the quote) and range from 1 February 2016 to 17 June 2016. The Plaintiff admitted that the first Defendant had made some repairs to the vehicle, but did not accept that the first Defendant had spent money on spare parts for the vehicle. The Court accepts that the first Defendant has in fact spent money repairing the Plaintiff's vehicle. The invoices expressly note that the spare parts are for an Eon Hyundai and that they were paid for by the first Defendant. The first Defendant however, did not raise a counterclaim to recover the cost of those repairs so this is not at issue to be dealt with by this Court. However, the invoices bring into question what repairs have been made to the vehicle by the Plaintiff, the cost of those repairs, and who has paid for those repairs. For instance, the quotations provided by the Plaintiff include parts that are included in the invoices proffered by the first Defendant. For instance, the quote given in evidence by the Plaintiff dated 26 December 2015 includes 'panel assy-hood', which is included in the invoice provided by the first Defendant (and paid by him) dated 7 March 2016; the Plaintiff's quote dated 26 December 2015 includes 'RAIL ASSY – FR BU' which is included in the invoice provided by the Defendant (and paid by him) dated 1 February 2016; the Plaintiff's quotation dated 26 December 2015 includes 'COVER-FRT BUMPER' which is also included in the invoice dated 7 March 2016 provided by the first Defendant (and paid by him); and so on. Accordingly, the Court does not consider it appropriate to include the two quotes provided by the Plaintiff in the calculation of damages.

[55] However, the Court is cognisant of the fact that though the first Defendant did not make a counter-claim in his Statement of Defence he may still wish to bring an action against the Plaintiff to recover the amount he has spent on repairing the car at a later date. It is therefore necessary to include the amount paid by him in the calculation of damages as these resulted from the accident caused by the second Defendant (and thus should be paid

by the second Defendant, or his insurer). The sum of damages taken together i.e. the amount paid by the Plaintiff and the first Defendant to repair the vehicle amount to Seychelles Rupees Seventy Nine Thousand Eight Hundred and Forty and Cents Forty-Five SR 79,840.45/-. The Court therefore finds that the second Defendant owes damages of Seychelles Rupees Eighty Thousand SR80,000/- to the Plaintiff.

[56] The Plaintiff also seeks costs for loss of use of Seychelles Rupees One Hundred Thousand SR100,000. During cross-examination, the Plaintiff explained that she had to take taxis and buses as she could not use the vehicle. She has not, however, provided any further details to break down the amount sought, i.e. the cost per day, the form of transport used and the frequency. Her oral evidence in this regard was inconsistent and unconvincing. The claims of loss of use are also complicated by the fact that the vehicle in question did not have a valid RFL at the time of the accident, meaning any loss of use cannot be wholly attributable to the accident. For instance, the Plaintiff would have had to take a taxi from the airport in any case given the lack of a valid RFL. Moreover, it is not clear on the evidence for how long the Plaintiff was unable to use the car as a result of the accident. The invoices range from December 2015 to September 2016, but many of the repairs appear to have been done by early March. In light of this, the Court awards loss of use for 10 weeks at a rate of Seychelles Rupees One Hundred SR100/- per day for an average of 5 days per week, which amounts to Seychelles Rupees Five Thousand SR5,000/-.

[57] Finally, the Plaintiff seeks moral damages of Seychelles Rupees Two Hundred Thousand SR200,000. Twomey CJ considered the approach taken to the assessment of damages in road vehicle accidents in the case of *Mathiot v Camille & Ors (CS 64/2012) [2017] SCSC 1001 (30 October 2017)*. The cases referred to in that case indicate that moral damages of the amount sought tend only to be granted where the individual has suffered a serious personal injury. In the *Mathiot case*, for instance, the Plaintiff was awarded Seychelles Rupees One Hundred Thousand SR100,000/- but the Plaintiff sustained a head injury, a fracture of the left femur, a laceration on the forehead and facial bruises. He was cared for in intensive care at the hospital and had to undergo ongoing therapy for the injuries sustained. Here, the Plaintiff has only suffered inconvenience as a result of her

vehicle being damaged. The Court accepts that it may be appropriate to order moral damages for the inconvenience suffered for keeping a motor vehicle in the garage of a repairer. (*See: Adeline v Ernesta (1992) SLR 13*). **Such damages are not, however, always considered appropriate: Low-Ken v Fanny (CA8/2015) [2016] SCSC 726 (06 October 2016)**. The Court considers that this is one such case. The Plaintiff allowed a vehicle to be driven that did not have a valid road fund licence. She was not driving the car at the time of the accident, so she has not suffered any mental and physical trauma as a result of the accident. The evidence also suggests that the first Defendant assisted with the repairs at no cost to the Plaintiff, reducing the burden on her. Awarding moral damages in such circumstances would therefore be inappropriate.

Conclusion

[58] The Court accordingly makes the following orders:

- (a) The Plaintiff's Complaint is dismissed in relation to the first Defendant;
- (b) The Plaintiff's Complaint is granted in relation to the second Defendant;
- (c) The Plaintiff's Complaint is dismissed in relation to the third Defendant;
- (d) The second Defendant is to pay to the Plaintiff the sum of Seychelles Rupees Eighty-Five Thousand SR85,000/- in damages, being Seychelles Rupees Eighty Thousand SR80,000/- in damages and Seychelles Rupees Five Thousand SR5,000/- for loss of use;
- (e) Costs and interests are to be paid by the second Defendant.

Signed dated and delivered at Ile du Port on the 21 October 2019

ANDRE- J