

**SUPREME COURT OF SEYCHELLES**

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**Reportable/ Not Reportable / Redact**  
[2019] SCSC 1135  
CS 63/2018

In the matter between:

**MAURICIO LAPORTE**  
*(rep. by Joel Camille)*

**Plaintiff**

and

**ROSEBELLE (PTY) LTD**

**(rep. by its Director, Mr. Jean-Pierre Morin,  
of Plaisance, Mahe)**  
*(rep. by Anthony Derjaques)*

**Defendant**

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**Neutral Citation:** *Laporte v Morin* (CS 63/2018) [2019] SCSC 1135 (4th December 2019)

**Before:** Pillay J

**Summary:** The Plaintiff claims the sum of SCR 6, 723, 040.00 from the Defendant as a result of personal injuries he sustained in a motor vehicle accident while he was a passenger and operator of an excavator being carried in the Defendant's vehicle.

**Heard:** 14<sup>th</sup> January 2019, 10<sup>th</sup> June 2019 and 11<sup>th</sup> June 2019

**Delivered:** 4<sup>th</sup> December 2019

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**ORDER**

- (1) The Defendant shall pay the Plaintiff the sum of SCR 300, 350.00
  - (2) Each side shall bear their own costs.
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**JUDGMENT**

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## PILLAY J

- [1] The Plaintiff in the case claims against the sum of SCR 6, 723, 040.00cts with interest as a result of injuries sustained in an accident on 30<sup>th</sup> January 2017.
- [2] The Plaintiff claims that he was an employee, namely and excavator operator, with the Defendant. He claims that on 30<sup>th</sup> January 2017, at Majoie, during the course of his duties with the Defendant, whilst seated at the back of a pickup truck belonging to the Defendant and whilst transporting an excavator, was physically injured. The Plaintiff claims that the said pickup truck was in operation and an employee of the Defendant, acting during the course of his duties with the Defendant was driving the said pick up.
- [3] The Plaintiff claims that the acts and omissions of the said driver, namely Mr. Jean Francois Esparon, constitute a faute in law rendering the Defendant vicariously liable in law.
- [4] By its Defence dated 15<sup>th</sup> July 2018 the Defendant admitted that the Plaintiff was an employee of the Defendant, Rosebelle (Pty) Ltd. It however denied that the Defendant is the employer of the Plaintiff.
- [5] Though it admitted that the Plaintiff was injured during the course of his employment it put the Plaintiff to proof as to the cause of the accident.
- [6] The Defendant's case is that the Plaintiff was solely responsible for the damages and loss suffered by him.
- [7] The Plaintiff particularised his loss and damages as follows:
- (1) *Fracture of the left leg below the knee, lacerations, left tibia deformity at SCR 1, 500, 00.00*
  - (2) *Pain and suffering, loss of enjoyment of sports, mobility impairment at SCR 500, 000.00*
  - (3) *Permanent disability resulting in economic loss (35 years income at a monthly salary of SCR 16, 868.00cts (minus 1/3 for exigencies of life) at SCR 4, 723, 040.00*
  - (4) *Medical report payment at SCR 350.00*

- [8] The evidence of Derik Payet is that he used to work at Rosebelle along with the Plaintiff. He was a supervisor with the Defendant but sometimes he would operate the machinery as well. He testified that there were no set procedures to take the excavator on the public road. The operator would sit in the back to make sure no cables gets caught on the excavator<sup>1</sup>. The operator would use a stick to push the cables out of the way so they could pass.
- [9] The evidence of the Plaintiff is that he was an employee of the Defendant. On 30<sup>th</sup> January 2017 he received a call from Jean-Pierre Morin telling him to get the excavator into the pickup. Jean-Francois Esparon was assigned to drive the pickup. The Plaintiff got the excavator in the pickup and sat in the cabin of the excavator. When they got to Majoie Esparon had to call the proprietor of the site because he was not sure where they were going. As they went up Esparon was still on his phone. As they climbed up the hill the cables got caught in the canopy of the excavator. He got out to remove the cables. When he removed the cables suddenly Esparon moved the pickup and he fell near the chain. That is when the excavator slid and crushed his legs.
- [10] Dr Betsy produced the medical report made by Dr Chetty. She explained that the Plaintiff was seen examined and a deformity of the left leg was seen with multiple wounds. It was swollen, painful and movement restricted. X-ray was done and diagnosis of tibia comminuted fracture was made. The wound was dressed and subsequently he was taken to surgery on 6<sup>th</sup> February to apply external apparatus to the fractured leg. He was discharged on 16<sup>th</sup> February. He continued with the dressing but follow-up x-ray showed no callous formation. In January 2018 he started to show callous formation which the doctor indicated was a sign that he was healing. As of January 2019 there was about 80% callous formation a result of which the head of surgery recommended another surgery to complete the healing. It was her evidence that the fracture would fuse but it would take time.
- [11] The evidence of Jean Francois Esparon is that he is employed with the Defendant. He was working on 30<sup>th</sup> January 2017. He was with the Plaintiff and they were asked to bring machinery to a site at Majoie. It was his evidence that usually the operator and in this

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<sup>1</sup> Page 6 of the proceedings of 14<sup>th</sup> January 2019

case, the Plaintiff, puts the machine in the pickup and secures his machine in the pickup. It was his evidence that the Plaintiff decided at the back of the pickup. As he was going up the hill at Majoie he heard a cry and when he looked back he saw the Plaintiff hanging from the back door and he stopped. The witness denied that he was at fault for the accident but said that it was the Plaintiff that fell down.

[12] At the close of the defence case counsels opted to file written submissions but only Mr. Derjacques was forth coming. Mr. Derjacques submitted that his client's case is anchored in Article 1834 of the Civil Code. In support of his case he relied on the finding by the Court of Appeal in the case of **Civil Construction Company Ltd. v Leon & Ors SCA 36/2016 [2018] SCCA 33 dated 14<sup>th</sup> December 2018** that strict liability applies against the employer.

[13] Mr. Derjacques submitted that the Plaintiff had proven his case, his evidence being cogent and reasonable and according to counsel clearly established how the accident occurred as a direct result of the faulty driving of the Defendant's driver.

[14] With regards to the claim for damages Mr. Derjacques relied on Article 1149 (2) of the Civil Code provides that:

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

[15] The issues for the Court to consider:

*(1) Was the Plaintiff an employee of the Defendant at the time of the accident?*

*(2) Did the accident occur during the Plaintiff's course of employment with the Defendant?*

*(3) Is the Defendant vicariously liable in law to the Plaintiff?*

*(4) Is the Plaintiff entitled to the sum of SCR 6, 723, 390.00 for the loss and damage he has suffered?*

[16] The law relating to vicarious liability is explained in the following paragraph from the case of **Civil Construction Company Ltd. v Leon & Ors SCA 36/2016 [2018] SCCA 33 dated 14<sup>th</sup> December 2018** is of relevance

*[38]The claimant must only prove that the thing caused him damage or an injury under Article 1384. Under that Article the person who is the “custodian” of the “thing” is liable unless he can prove liability by an act exterior to the “thing” in his custody. “Custody” is defined by case law as “powers of use, control and management of the thing” (see Cass. Ch Reunies 2 December 1941).*

*[39]...[a case] under Article 1384 only requires the proof of the damage. The burden of proof would have shifted to the Appellants to show that the cracks and other damage suffered was not as result of the acts of things in their custody act but as a result of natural events (e.g. vis major), the intervening act of a third party or the act of the victim himself (see Jumaye (supra) See also Dalloz, Encyclopédie de Droit Civil, Verbo Responsabilité du Fait des Choses Inanimés (2nd edn, Paris 1951-1955)104, Henri Mazeaud, Louis Mazeaud and André Tunc, Traité Théorique Et Pratique De La Responsabilité Civile Delictuelle Et Contractuelle, Tôme 1 (6th edn, Montchrestien 1965) 405-08).*

*[40]Further, Article 1384 (3) provides that masters and employers are strictly liable for the damage caused by their servants and employees acting in the scope of their employment. There is therefore a presumption of fault on the part of employers for the acts of their employees.*

[17] The Defendant’s case is that the Plaintiff is solely to blame for the injuries he sustained.

[18] The evidence of Rosie Damou, a Director of the Defendant, is that the Plaintiff is an employee of the Defendant since ‘he was never terminated so basically was still employed’ with the Defendant<sup>2</sup>.

[19] Rosie Damou accepted that the Plaintiff was injured during his working hours, that the driver of the pickup was transporting the excavator during his working hours and accepted that the injury was caused during the course of the Plaintiff’s duties with Rosebelle Pty Limited<sup>3</sup>.

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<sup>2</sup> Page 17 of the proceedings of 11<sup>th</sup> June 2019 at 8.47am

<sup>3</sup> Page 25 of the proceedings of 11<sup>th</sup> June 2019 at 8.47am

- [20] She further accepted that ‘when the accident happened, the driver who was driving the truck called the office and we made arrangement with the hospital to send an ambulance immediately and we informed Mr. Tirant who was at that moment a driver with us to go and pick up truck which was there.’<sup>4</sup>
- [21] She accepted that Jean Francois Esparon was an employee of the Defendant at the time and has been in the employment of the Defendant for about 3 to 4 years<sup>5</sup>.
- [22] It was also the evidence of Rosie Damou that the Defendant emphasises that uniform needs to be worn as well as safety shoes at all times. She testified as per D1 that the Plaintiff was issued with a safety shoe<sup>6</sup>. The safety shoe it is noted comes up to the ankle whereas the injury to the Plaintiff’s leg was higher up, just below the knee as per PE8. In the circumstances it is irrelevant whether or not he had safety shoes or was wearing them at the time he was injured since the site of the injury is higher up the leg above the ankle. It is noted that there is no evidence that had he been wearing safety shoes the injury would not have occurred at all in the sense that the safety shoes would have stopped the excavator from crushing the Plaintiff’s leg at all.
- [23] The Plaintiff’s evidence is that when they got to Majoie the driver Esparon was on his phone because he was not sure of the location<sup>7</sup>. As they went up the road Jean-Francois Esparon’s evidence is that they had not reached the wires when he heard the cry. He added that when he was climbing the hill he did not see the wires<sup>8</sup>. On an examination of PE9a, though the wires are not so clear on the photograph, the wires are so low that he could not have failed to see the wires as he drove up and would more likely than not have had to stop in order for the Plaintiff to move the wires in order for the pickup to drive up as attested to by the Plaintiff.
- [24] Furthermore it is noted that he has 25 years driving experience of heavy machinery and big trucks so he would have been on the lookout for wires and could not have failed to see the wires. Whether or not the Plaintiff should have been sat in the back or not, his

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<sup>4</sup> Page 20 of the proceedings of 11<sup>th</sup> June 2019 at 847am

<sup>5</sup> Page 20 of the proceedings of 11<sup>th</sup> June 2019 at 8.47am

<sup>6</sup> Page 19 of the proceedings of 11<sup>th</sup> June 2019 at 8.47am

<sup>7</sup> Page 32 of the proceedings of 14<sup>th</sup> January 2019 at 930am

<sup>8</sup> Page 34 of the proceedings of 11<sup>th</sup> June 2019 at 8.47am

evidence is corroborated by that of Esparon in that the Plaintiff was sat in the back from Plaisance. Having stopped, Esparon was under a duty to ensure that the Plaintiff was seated in the cabin once again and secure before he moved the pickup again.

[25] On the above it is not in doubt that the pickup carrying the excavator as well as the excavator itself which crushed the Plaintiff's leg was owned by the Defendant. It is also not in doubt that the driver of the said pick up was and is an employee of the Defendant.

[26] With that said the Defendant's argument that the Plaintiff was solely to blame for the accident and his subsequent injuries fails.

[27] It is the finding of this Court that the Plaintiff was an employee of the Defendant on the date of the accident which occurred during the course of his duties with the Defendant. It is also the finding of this Court that the Defendant is vicariously liable for the accident and injuries sustained by the Plaintiff on 30<sup>th</sup> January 2017.

[28] With regards to the issue of quantum Plaintiff seeks SCR1, 500, 000.00 for fracture to the left leg and deformity.

[29] In **Maria vs Valencia [2014] SCSC 295** the Court awarded SR300, 000 for injury to the Plaintiff's coccyx and a further sum of SR200, 000 for moral damage. In that case there was evidence that her injury was degenerative and could eventually result into paralysis.

[30] In **Low Toy v Manikon and Anor [2015] SCSC 173**, the Plaintiff was awarded SR50, 000 for pain and suffering, SR100, 000 for partial permanent disability to the right hip and SR20, 000 for moral damages. He had suffered dislocation of the right hip, fracture of the anterior column of the right acetabulum with fragment dislocation with resulting deformity of the right hip and the limitation on a range of movements and tenderness and inability to move his right foot.

In the case of **Sullivan v Magna and Anor (CS 134/2011) [2016] SCSC 491 (08 August 2016)** the Plaintiff was awarded SR27, 350 for his injuries.

- [31] In **Otieno v SPTC [2017] SCSC 85** the Plaintiff sustained a broken left leg and continues to have a limp. He was awarded a global sum of SR180, 000.
- [32] In **Dodin v Geers [2017] SCSC 157** however, the Supreme Court noted that there was an upward trend in the quantum of damages to be awarded in road traffic accidents. In that case the Plaintiff suffered injuries to his eye and his knee and received the global sum of SR760, 200. There was permanent disability sustained by the Plaintiff in this case. On appeal however the amount was reduced to SCR 150, 200.00 partly on a finding that the trial court erred in making an award for material damages which had not been claimed.
- [33] In considering the appeal the Court of Appeal in **Dodin** above reviewed the case of **Farabeau Casamar Seychelles Ltd (2012) SLR 170** noting that;

*the plaintiff was a 36 year old employee of the defendant. He was injured in the course of his employment with the defendant when a bale of new fishing net fell on him. The plaintiff claimed to have suffered "(a) Swelling and tenderness of left knee and a comminuted fracture of the left patella; (b) patella-femoral anchilosis restriction of movement; (c) atrophy of the quadriceps muscle; and (d) permanent disability." The plaintiff claimed from the defendant the following sums of money under the said headings; "(a) pain and suffering – Rs100,000; (b) loss of amenities – Rs150,000; (c) distress and inconvenience – Rs 149,300; (d) permanent disability – Rs500,000; (e) medical report – Rs700; and (f) loss of earnings – Rs1,497,600, all totalling to a sum of Rs2,397,600.00." According to the evidence the plaintiff suffered multiple injuries including a fracture of the patella. He was operated on twice, but in spite of his recovery he had suffered among other things a certain level of permanent disability. He was not able to move his leg as he used to. Neither was he able to stand for long. He was no longer able to participate in sports. His sex life had been inhibited. He has failed to get alternative employment and lost the employment he had with the defendant. The court accepted from the testimony of the plaintiff that he had suffered pain and suffering, and that there has been a loss of amenities together with permanent disability. The court made a global award of 350,000/- rupees for injuries that the plaintiff had suffered and continues to suffer by reason of the accident. FMS Egonda-Ntende, Chief Justice, considered Allan Tucker (supra) in making the award.*



as well as the case of **Allan Tucker and anor v La Digue Island Lodge Civil Side No. 343 of 2009 (unreported)** noting that;

*the first plaintiff suffered the following injuries:"(a) Depressed tibial plateau fracture of the left knee; (b) Wound to left knee; (c ) Internal bruising to left calf; (d) Severe lower back bruising; (e) Multiple body scratches.". According to the evidence, the first plaintiff's fracture had healed well. There was however, residual swelling at the right knee. There was some discomfort and clicking in his knee. He was likely to develop osteoarthritis and will suffer all this for the rest of his lifetime. He has limitations of movement to the left knee. His discomfort was estimated to be between minor and moderate. The court made an award of 190,000/- rupees.*

- [34] In **Mathoit v Camille & Ors (CS 64/2012) [2017] SCSC 1001 (30 October 2017)** the Plaintiff had sustained a head injury, a fracture of the left femur, a laceration on the forehead and facial bruises. The Court awarded SR500, 000 for the injury on the basis that it was fair since no permanent disability was sustained by the Plaintiff.
- [35] In the current case, the Plaintiff testified that he cannot play football, walk or swim as before. It was his opinion that one leg is 1cm shorter than the other and it is still painful.
- [36] The medical report, PE15, shows that the Plaintiff, on being examined was found to have deformity in the proximal 1/3<sup>rd</sup> of the leg, multiple wounds due to crush injury, swollen, severe tenderness, restricted movements with mild decreased sensation over anterior part of leg. The evidence of Dr Betsy was that with surgery the bone could heal and fuse. She indicated that the surgery can be successful but that it would take time.
- [37] There was no evidence of any permanent disability nor was there any medical evidence that one of his legs was shorter than the other.
- [38] It is noted that the Defendant paid the Plaintiff his salary up to March 2018 in spite of him not returning to work as he was expected to<sup>9</sup>.
- [39] On the basis of the above it is the view of this Court that SCR 225, 000.00 is a fair award for the injuries sustained by the Plaintiff.

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<sup>9</sup> Page 20 to 21 of the proceedings of 11<sup>th</sup> June 2019 at 8.47am

[40] Under the head of pain and suffering, loss of enjoyment of sports, mobility impairment it is the finding of this Court that SCR 75, 000.00 is a fair award.

[41] There being no such evidence the claim for permanent disability resulting in economic loss therefore has to fail.

[42] On the basis of PE14, the request for medical report, he is awarded SCR 350.00 for his medical report.

[43] On the basis of the above I make the following orders:

(1) The Defendant shall pay the Plaintiff the sum of SCR 300, 350.00

(2) Each side shall bear their own costs.

Signed, dated and delivered at Ile du Port on 4th December 2019

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Pillay J