IN THE SUPREME COURT OF SEYCHELLES

Reportable
[201…] SCSC 1094
CS 121 /2018

GEORGE ROBERT LABLACHE **Plaintiff**
(rep. by Anthony Derjacques

and

MASON'S TRAVEL (PTY) LIMITED **Defendant**
(rep. by Alexandra Benoiton)

Neutral Citation:	*Georges Robert Lablache v Mason's Travel (Pty) Limited* CS59 of 2018, delivered on 06 [SCSC.1094..]
Before:	Vidot J
Summary:	Motor accident, liability Articles 1382 and 1383 of the Civil Code, vicarious liability; Article 1384 and valuation of damages; Articles 1149 and 1150 of the Civil Code.
Heard:	28th May, 06th June and 06 September 2018
Delivered:	06 December 2019

JUDGMENT

VIDOT J

Background

[1] The Plaintiff, Mr. George Robert Lablache sues the Defendant, Mason's Travel Limited for damages as a result of an accident that occurred 28th June 2018, involving his vehicle S1009 and that of the Defendant's S10386. The accident happened at the Providence Roundabout. The Plaintiff is a taxi operator and has since the accident been unable to

operate his business as his vehicle remains unrepaired. He claims that his vehicle is a total writeoff.

[2] The Defendant's vehicle was being driven by one of its employee with full authority in the course of his employment. That employee is no longer in the Defendant's employment. He has left jurisdiction. The Plaintiff avers that the accident was caused by that employee's faute which therefore renders the Defendant vicariously liable in law to the Plaintiff.

[3] As per Plaint the particulars of faute are listed as follows;

i. The Defendant's employee drove the vehicle too fast;

ii. The Defendant's employee drove in an incompetent manner;

iii. The Defendant's employee failed to notice and appreciate the Plaintiff's vehicle on the road;

iv. The Defendant's employee failed to operate his vehicle in the proper lane on the road;

v. That the Defendant's employee failed to stop and apply the brakes in the said vehicle on time

[4] The Plaintiff who attributes the cause of the accident entirely to the Defendant's employee negligence makes a claim of SR 721,200.00. The sum includes the write off value of the vehicle which he claims was beyond repairs in the sum of SR400,000.00, economic loss for the monthly profit as a taxi operator of SR28,000.00 per month for June to August at SR84,000.00, additional economic loss for 8 months of future business at SR224,000.00 and cost of taxi fares to take his son to school for 11 months at SR13,200.00

[5] The Defendant denies that its employee was in any way negligent and that they are not liable to the Plaintiff. The former denies that the accident was occasioned by the faute of its employee. The driver who was driving the Defendant's vehicle was Mr. Laxson

Butao. On its part, in their Defence they list down particulars of faute or negligence attributable the Plaintiff. These include;

i. That the Plaintiff failed to give sufficient and reasonable notice to the driver of the other vehicle, Mr. Butao;

ii. The Plaintiff failed to alert that driver of the other vehicle;

iii. The Plaintiff failed to notice the driver of the other vehicle and thus stopping the Plaintiff's car in time to prevent the collision;

iv. The Plaintiff failed to keep a proper lookout for the oncoming vehicle; and being negligent in all circumstances of the case.

[6] However, despite averring above particulars of negligent by the Plaintiff in the manner he operated his vehicle, the Defendant did not file any counterclaim. They nonetheless claimed that the Plaintiff was contributorily negligent. That negligence it is argued is as per the particulars above. The Defendant traversed all allegations and denied liability.

[7] The Plaintiff gave evidence which basically rehearsed allegations raised in the Plaint and elaborated on the averments. The Defendant did not call any witnesses and neither were any of its management executives called as witnesses. Counsels were invited to make written submissions. Allowances were made for an extension of time for filing of such submissions. In the end only Counsel for the Plaintiff filed his submission.

The Law

Liability

[8] The Plaintiff was not specific as to whether he is relying on Article 1382 or 1383 of the Civil Code of Seychelles ("the Code") to establish his case. He seems to be holding onto both articles. I am of the opinion that in such a case the Plaintiff can rely on either articles. Article 1382 (1) reads thus;

"Every act whatever of man that causes damage to another obliges him by whose fault it occurs to repair it"

Article 1382 (2) provides that;

"Fault is an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused. It may be the result of a positive act or an omission"

Therefore, if the Court was to hold that the Defendant's employee's manner of driving was such that was imprudent considering the special circumstances in which the damage was caused, that would therefore render the Defendant liable. That liability would stem from the fact that Mr. Butao was in employment with the Defendant and that at the material time was in the course of his employment. The former was exercising a delegated authority, thus making the Defendant vicariously liable; see **Derjacques v Commissioner of Police [1994] SLR 38**. It was admitted in the Defence that Mr. Butao is an employee of the Defendant. However, under cross examination there was nothing to traverse the Plaintiff's testimony that at the material time Mr. Butao was discharging his duties as an employee. I take it that indeed that the accident occurred during the course of his employment.

[9] Article 1383 (1) and (2) of the Code provides

(1) *"Every person is liable for the damage it has caused not merely by his act, but by his negligence and 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 third party or an act of God external to the operation or the functioning of the vehicle....."*

[10] In **Seychelles Breweries Ltd. v Sabadin SCA 21/2004** refereed to Dalloz Codes Annotés when considering Article 1384 states as follows;

77 "Le maître est responsable du dommage aux ouvriers qu'il emploie, lorsqu'il a negligé de predre des precautions suffisantes pour guarantir leur sécurité"

[11] Article 1384 (1) of the Code therefore establishes that a person is not only responsible for damage that he has caused, but for damage caused for acts of persons of whom he is responsible or for things in his custody, while sub-Article (3) establishes liability of masters for damage caused by their employers whilst in the course of their employment. A deliberate act of an employee contrary to express instructions of the master shall not render the master liable. I have already above found that when the accident happened, Mr. Butao was in the course of his employment.

[12] The Plaintiff explained that on the 28th June 2018, he was driving from the airport to town and the accident occurred at the Providence roundabout. The accident it is averred was the due to the fault of the Defendant's employee. The Defendant has, maybe inadvertently, admitted liability. The Defendant produced D1 which is a letter dated 28th August 2018, issued by Falcon Insurance and addressed to Mr. Derjacques, the Plaintiff Attorney. In that letter it is stated that *"initially, the third party involved was not accepting liability and with the assistance of Mr. Lablache we finally got the third party to accept liability which was confirmed via email on Friday 20th July 2018."* The third party being referred to is the Defendant.

[13] I also consider that the accident occurred at a roundabout. It is not disputed through cross examination that the Plaintiff was already on the roundabout and about to exit when the accident occurred. He had the right of way. Mr. Butao should have given way to vehicles coming on his right. The onus was on him to stop and wait till the road was clear before proceeding. He did not and hit the Plaintiff's vehicle on its right front side and in the process dragged it from the outer lane into the inner lane. It is clear from the damage that the Plaintiff's vehicle sustained that Mr. Butao was at fault. Therefore, that suggest overwhelmingly that the Defendant was vicariously liable. The nature of the accident is indicative that the allegations of contributory negligence made by the Defendant are without basis. See **Winsley Mousmie v Hansel Boniface & Others [2018] CS 92/2015**. Apart from the averments as to contributory negligence, there is no evidence to that effect

Damages; Quantum

[14] Article 1149 (1) of the Code, as cited by Counsel for the Plaintiff serves as good reference here. That article provides that *"..... damages which are due to the creditor cover in general the loss that he has sustained and the profit of which he has been deprived except as provided hereafter."* Article 1150 (1) which is equally of relevance states that *'the debtor shall be liable for damage with regard to damage which could have been reasonably foreseen or which was in the contemplation of the parties when the contract was made..."*

[15] The Plaintiff is requesting that his vehicle be written off and that he is paid its full value of SR400.000.00. That was not always his position when making claims from his insurance company; Falcon Insurance. In fact he agreed whilst giving evidence that the car could be repaired and that initially he had consented to that option, but he later changed his mind. He further disputes that the insurance company wanted to repair some of the parts that he believed should be replaced with new ones. I had a look at the photos (exhibit P4) and find that the vehicle was not a complete write off. Furthermore, his insurance policy (exhibit P1) makes it abundantly clear as to when a vehicle will be considered a write-off. This is further spell out in exhibit D4. There are 2 criteria to be satisfied for a vehicle to be written off. That is where the vehicle is considered repairable but the cost of repairs would be greater than the market value of the vehicle and secondly, the assessor's report demand that it be written off. The Plaintiff did not fall within any of these criteria.

[16] Falcon Insurance provided an initial cost of SR224, 870.00 and offered that sum to the Plaintiff who had indicated that he will effect the repairs himself. That offer was made prior to assessor making a valuation. The Plaintiff refused that offer. After the evaluation the cost of spares was adjusted to SR128,756.40 (reduced from SR189,920.00). by Autopanel, a garage which revised the cost of repairs to an increase from SR37,950.00 to SR42,665.00. The Plaintiff did not agree with the sum of SR173,422.00. He indicated that he would get an independent assessor. That was Intelcar. They could not give an

assessment as the chassis had moved and they needed to explore beyond that but could not do so.

[17] I have examined the assessment report of Falcon (exhibit P6). I do believe that the Plaintiff should to have some of the damage parts repaired but some of the spares should be replaced. The vehicle was 12 years old. I consider the chassis to be an important component of a car and needs to be replaced rather than repaired. The grill and sunroof too have to be replaced rather than repaired. I therefore consider to increase the cost of spares to SR159,338.00. (average between original cost of spares and the revised sum of such cost) After adding the labour cost, I therefore award the SR202,503.00 for repairs of his vehicle.

[18] I consider the Plaintiff to have made a loss of earning. This I believe is what is being claimed as economic loss and future economic loss. The Plaintiff claims he was earning between SR800 to SR1,000.00 per day. I believe that this is a reasonable assessment of his earnings. He now earns about SR1,500.00 to SR2,000.00 per month. However, the Plaintiff could have taken the offer of SR224,870,.00 that was originally made. I have made an award which is even less. He could have repaired his vehicle and not wait for so long. In total I believe that an award of a total of 6 months should be reasonable, that is one month to complete negotiations (the Defendant having accepted liability on 20th July 2018) and 5 months to source materials and effect the repairs Therefore, I award I make an award of SR168,000.00.

[19] He further makes a claim of SR 13,000.00 for alternative transportation for his child to a from school. He did not produce any receipts. The same could have been obtained. Therefore, I cannot make any award under this head.

[20] I therefore enter judgment for the Plaintiff against the Defendant inthe sum of SR370,503.00 with interest and cost.

Signed, dated and delivered at Ile du Port on 06 December 2019

Vidot J