

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC ...
CN 69/2016

In the matter between

MARIE ALICE MOREL	1st Plaintiff
DONALD ERIC JULES	2nd Plaintiff
ROUVANI JULES	3rd Plaintiff
SHANITA JULES	4th Plaintiff
ELMONDA JULES <i>(all rep. by S. Rajasundaram)</i>	5th Plaintiff

and

DIRK ROSE <i>(rep. by E. Chetty)</i>	Defendant
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Neutral Citation: *Morel & Ors v Rose* (CS69 of 2016) [2020] SCSC..... (3 April 2020).
Before: Vidot J
Summary: Faute, negligence; liability and quantum of damages
Heard: 5 April 2018, 29 November 2018, 3 December 2018, 2 February 2019 and 2 September 2019
Delivered: 3 April 2020

ORDER

Faute in terms with Article 1383(1) of the Civil Code is established against the Defendant.
Defendant to pay the Plaintiffs the sum of SR1,050,000.00 with interest and costs.

JUDGMENT

VIDOT J

Background

[1] The is a delictual action that arose out of road accident that happened at Bois de Rose, Roche Caiman, close to the petrol service station. The accident happened on 26th July 2014. It is alleged that the Defendant was driving his vehicle along that road when it knocked down and killed Ericson Jules (hereafter “Ericson”) a young Police Officer, aged 20 years old. Ericson died on 27th July 2014. It is averred that the accident was caused by the “*faute*” of the Defendant as he drove his vehicle rashly and negligently. It is further averred that as a result of the accident the Plaintiffs, who are the parents and siblings of Ericson, suffered shock and his death created a vacuum in their lives. They also claim that as result of the death the Plaintiffs suffered great financial loss. Therefore, the Plaintiffs make the following claims:

(a) Compensation (for moral damages, monetary loss and shock) SR500,000.00

Payable to the first Plaintiff, the mother

(b) Compensation (for moral damages, monetary loss and shock) SR500,000.00

Payable to the second Plaintiff, the father

(c) Compensation (for moral damages, loss and shock) SR900,000.00

Payable to 3 siblings.

They also pray for cost of the suit and interest.

[2] The Defendant claims that he was unaware that Ericson was involved in an accident on the 26th July 2014. However, he claims that as a consequence of the death of Ericson on the 27th July 2014, the Republic brought a charge of murder against him for causing the death of Ericson, but he was acquitted of the charge. He denies that he had driven his

vehicle in a rash and negligent manner. The Defendant therefore prays that the Court dismisses the case with cost.

Plaintiffs' Evidence

- [3] Marie-Alice Morel, the 1st Defendant, is the mother of Ericson. She testified that on the 26th July 2014 she received a call that her son had been involved in an accident. He was at the time working with the Traffic Section within the Police Force. This is confirmed by Mrs. Angele Lebon, the Human Resources and Administration Officer of the Police Force. He was a Constable and in employment for one year prior to the incident. Actually, according to Mrs. Lebon, he was in employment from 1st August 2012 to the time of his death, 27th July 2014. He was making a contribution of SR2000.00 to the family household per month and was also assisting his siblings. That is confirmed by Donald Jules, the father of Ericson when giving evidence. She recounted that when she reached the hospital, Ericson was already dead. She saw the body and she screamed with all her force. She says that she is still in shock and that Ericson is always on her mind. After his death she felt sick and could not do anything.
- [4] Donald Jules, Ericson's father testified that the Police came to their home and conveyed them to the hospital. At the hospital they found the dead body of Ericson. He had lots of injuries to both his head and body. He was informed by the Police that the accident had been caused by the Defendant. The Defendant was charged with murder, but he was acquitted. He attended some of the court sessions. He states that he was in shock when he heard of the demise of his son and up to this day he and his family still feel the shock. He says he is mentally aggrieved.
- [5] Mrs. Lebon testified that Ericson's salary was SR8,945.00 at the time of his death and that he would further be entitled to gratuity. For the first 5 years this is 14% of the gross aggregate. Gratuity is then given every 2 years. However, the dependants of Ericson were paid full compensation as was due under the scheme of service. That sum amounted to SR149,585.49.

- [6] The three siblings gave evidence: Shantina Jules, Elmonda Jules and Rouvany Jules. They largely corroborated their parents' evidence especially in confirming that Ericson made contributions to the household and made monetary and other forms of gifts to them personally as well. They testified that they have been affected by his death, particularly after seeing his body at the E & R at the hospital. They miss him.
- [7] Randell George Gappy is a Police Officer who was working with Ericson the day he was hit by a vehicle and died. There were five or six officers doing spot checks on vehicles that night. They were Corporal Bristol, ASP Denis, WPC Larue and Corporal Mathiot. The accident happened at around 11p.m. He had signalled a vehicle to stop and it decreased its speed suddenly. Ericson was moving to conduct necessary checks on the vehicle in the lane leading to Victoria, when suddenly the driver accelerated and hit Ericson who was in the middle of that lane. The vehicle hit Ericson so hard that it sent him flying into the air and then he fell down on the road. This is corroborated by Corporal Maria Mathiot. He was shocked. Corporal Mathiot on her part said she panicked. The vehicle did not stop. He thereafter mounted his bike and tried to look for the vehicle. He went as far as the playing field at La Retraite. He did not locate the vehicle and returned to the scene of the incident where Ericson was still on the ground. Corporal Larry Adrienne also recounted that after he heard a vehicle approaching with loud noise he looked out, only to see Ericson being thrown into the air. He further stated, like Randell Gappy, that all officers were wearing reflective vests and that Ericson, Gappy and Bristol were stopping cars. He conducted a breathalyser test on the Defendant when he was at the police station. At 2.45 am it recorded a reading of 66ml and 77 ml at 2.50 am. He tried to go after that vehicle in a police vehicle but without success.
- [8] Larry Adrienne further testified that Ericson decided to stop the vehicle that was making loads of noise. The vehicle stopped and the flashlight that the Police had placed on the road as alerting motorists to their presence were still illuminating. As he was crossing the road to go to the driver's side, the vehicle accelerated and hit Ericson. He was hit into the windscreen and fell on the side of the car which dragged Ericson some distance until he fell to the ground.

[9] Later on he received information that 2 persons had reported to the Police Station in regards to the accident. He came to the station and saw the Defendant and another person there. He talked to the Defendant who told him that when he reached the English River Clinic he realised that he had hit the something. His evidence regarding the accident is largely corroborated by the testimony of Police Officer Alois Bristol. He confirmed that the car had stopped and when Ericson went towards the car it just suddenly accelerated and hit Ericson in the process.

The Defence Case

[10] There were no witnesses who testified on behalf of the Defendant. He did not testify either. The defence in this case seems to be that, since the Defendant was charged and acquitted on a charge of murder in a criminal case in respect of the incident, he could not therefore now be found to have committed a faute against the Plaintiff. He denies that the accident was a consequence of his negligence. The questions put by his Counsel to the Plaintiffs witnesses, particularly the Police Officers, suggest that the accident did not occur as recounted by these officers and he puts the plaintiffs to strict proof on these averments.

Submissions

[11] Counsel were given time to file written submissions. The Court waited a long time for them as the dates for submitting the submissions were not observed. In the end, I received submissions from Counsel for the Plaintiff on 2nd September 2019. No submissions by Counsel for the Defendant was filed.

Acquittal in the Criminal Case

[12] It is trite that the fact that a person has been acquitted in a criminal case does not preclude a person affected by the act of that person from filing a civil claim. Therefore, that acquittal shall not provide an absolute defence in a civil suit but may have some impact. Exhibit P12, the Court file in CR37 of 2014 shows evidence that the accident could have been caused by the rash and negligent manner of driving of the Defendant. As a result thereof, Ericson was killed. Counsel for the Plaintiff cited **Narajan Alphonse v Romeo**

Monthy SCA 28/23 which referred to Cross and Taper on Evidence (12th Edition, p116) in which it was held that there are varied reasons as to why an acquittal should not be admitted as evidence of innocence in subsequent civil proceedings. Chief among these being the fact that the standard of proof is different.

Faute

[13] First and foremost the required standard of proof in this case is the balance of probabilities. The Plaintiffs had to first establish that the Defendant committed a *faute* against them when he hit Ericson with his vehicle. If that is proved then the issue of quantum of damages has to be addressed. The Plaintiff has to prove that there was a *faute*, damage and a causal link. This was affirmed by the Court of Appeal in the case of **Emmanuel v Joubert SCA 49 Of 1996 LC 117**. It was held in **Pierre v Attorney General [2010] SLR 248** that fault is an error of conduct which results from a breach of a duty of care. Articles 1381 and 1382 in general deal with liability of a person who causes damages to another or property of another.

[14] Article 1381 reads thus;

- “1. *Every act whether of man that causes damage to another obliges him by whose fault it occurs to repair it*
2. *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.*
3. *Fault may also consist of an act or an omission the dominant purpose of which is to cause harm to another, even if it appears to have been done in the exercise of a legitimate interest.*
4. *A person shall only be responsible for fault to the extent that he is capable of discernment; provided that he did not knowingly deprive himself of his power of discernment.*
5. *Liability for intentional or negligent harm concerns public policy and may never be excluded by agreement. However, a voluntary assumption of risk shall be implied from participation in a lawful game.*

[15] Article 1383 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.”*

[16] An officer on the road undertaking duty deserves a duty of care from other road users. The Plaintiffs established to this Court that it was the Defendant that hit Ericson. Therefore, Article 1383(2) is pertinent. The presumption is that since the Defendant was operating his vehicle and caused damage to Ericson, it is presumed that he is at fault. The onus shifts to the Defendant to prove that the damage was solely due to the negligence of Ericson, or that an act of a third party or act of God external to the functioning of the vehicle. It was to be made abundantly clear that it is non-contentious that the accident was the result of the Defendant hitting the Plaintiff with his vehicle. The Defendant despite having fled the scene after the accident reported to the Police Headquarters in Victoria in the early hours of 27th July 2014. Defence Attorney questioned the witnesses in regards to the actual manner of operation of Police on the night when conducting the spot checks. His arguments seem to suggest that the officers were negligent in the manner they carried out the operation.

[17] Police Officers Randell Gappy, Alois Bristol and Larry Agathine all testified that the Police were wearing reflective vests that evening. They had placed lights on the road and wore white gloves. There is no evidence to indicate otherwise. This gear was necessary to indicate to oncoming motorists of police presence and that spot checks were being carried out. That indicates that the police officers adopted preventive measures against accidents. The Defendant was approaching at considerable speed. The officer indicated to the driver to stop and there is no doubt that the Plaintiff noticed the police attempting to stop him. This is established by the fact that the above named police officers all testified that the

vehicle slowed down. However, as per evidence, when Ericson was about to proceed to the driver's side of that vehicle it suddenly accelerated as a result of which Ericson was hit and sent flying through the air and fell down on the road, injured. The driver of that vehicle sped away. Randell Gappy tried to locate him by searching for the vehicle on his motor bike but in vain.

[18] The Defendant failed to rebut or contradict the evidence of the Plaintiffs as to the manner the accident occurred. The Plaintiffs demonstrated that the accident was not due to negligence on the part of Ericson. It was held in **Narajan Alphonse v Romeo Monthy SCA 28 of 2013**, that a party who has failed to satisfy the Court upon a particular matter in respect of which it is proposed to contradict his evidence in chief or impeach his credit by calling other witnesses, will not be permitted to invite the jury or the tribunal of fact to disbelieve the witness' evidence on that matter.

[19] So, this Court finds that there was an error of conduct by the Defendant. In accelerating his vehicle after he had stopped and when Ericson was walking to his side of the vehicle, the Defendant's conduct was rash and negligent. Article 1382(4) provides that a person is only responsible "*for fault that is capable of discernment; provided that it did not knowingly deprived himself of the power of discernment.*" A prudent and sensible person would have appreciated – when the police have adopted all preventive and safety measures to operate a spot check – that it is reckless to accelerate one's vehicle when the police approach it. I furthermore note that the Defendant had a certain level of alcohol in his system (Exhibit P10). That can be interpreted as the Defendant having deprived himself of the power of discernment. Therefore, the Defendant is liable for the death of Ericson. The behaviour of the Defendant was indeed an error of conduct which would not have been committed by a prudent person.

Damages

[20] Since I have found the Defendant caused damage to Ericson which resulted in his death, he is liable to the Plaintiffs. As provided under Article 1382(1), "*Every act whatever of man that caused damage to another obliges him by whose fault it occurs to repair it*". So, therefore the Defendant has to pay damages.

[21] Article 15 of the Constitution provides for a right to life. As stated in **Government of Seychelles v Marie Michel Solana & Ors**; *“life is so precious that it should not be lost under circumstances which are inappropriate”* and that *“in cases involving damages for loss of life the amount to be awarded as compensation should reflect this reality”*. The general principle is that in awarding damages, the circumstances of each case should be taken into account. In that process due consideration must also be taken to the rate of inflation and to the socioeconomic situation reflected in the rise in the cost of living. The award must reflect the reality of life; see also **Government of Seychelles v Rose [2012] SLR 364**. In the latter case it was held that *“it is a generally accepted principle that damages in wrongful death cases are designed to compensate for losses resulting for death of family members.”*

[22] The Plaintiffs testified that they have been affected by the death of Ericson. They were in shock when they learnt of his death and still miss him. Marie Alice stated that she could not do anything after learning about his death. Apart from these averments they did not expatiate as to how the death of Ericson affected them emotionally and psychologically. Ericson was a very young man who was still residing at his parents’ home at the time of death. He made contribution of SR 2000/- monthly to the household and gave gifts to his siblings. At the time of his demise his salary was SR8,945.00 monthly. I do not believe that Ericson would have continued to live in his parents’ home throughout his life and therefore keep making contribution to the household throughout. He was 20 years old. At some point in time he would have moved out of his parents’ house which he shared with his 3 siblings. He would have found a partner and moved on with his life. He would not have been able to make regular financial or other gifts to his siblings. The siblings are all of age and they too will be forging their own family. In arriving at a reasonable quantum for damages I have considered the following authorities: **Marie-Andre Jouanneau & Others v Government of Seychelles SCA 4 of 2007**, **Charles Vantigadoo v Government of Seychelles SCA 28 of 2006**, **Government of Seychelles v Marie Michel Solana & Others SCA 15 of 2011** and **Cerf Surf Properties v Ian Davidson & Others SCA 12 of 2017**.

[23] I therefore enter judgment in favour of the Plaintiffs against the Defendant as follows:

- (i) To the 1st and 2nd Plaintiffs a sum of SR300,000/- each;
- (ii) To the 3rd, 4th and 5th Plaintiffs a sum of SR 150,000/- each;
- (iii) Cost of the suit;
- (iv) Interest from the date of this judgment.

Signed, dated and delivered at Ile du Port 03rd April 2020

Vidot J