

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 707
CS 120/2019

In the matter between:

LEON MONDON
(rep. by Kelly Louise)

PLAINTIFF

And

1. MICHELINE GEORGES
(rep. by Somasundaram Rajsundaram)

1ST DEFENDANT

2. H. SAVY INSURANCE CO LTD
(rep. by Somasundaram Rajsundaram)

2ND DEFENDANT

Neutral Citation: *Mondon v Georges & Anor* (CS 120/2019) [2020] SCSC 707 (29 September 2020).

Before: Twomey CJ

Summary: delict-road traffic accident- foot injury – quantum of damages-

Heard: 24 July 2020

Delivered: 29 September 2020

ORDER

The Plaintiff is awarded the sum of SCR 80,000 for his injury and SCR100, 000 for moral damage and SCR 5,000 for his transportation costs. He is also awarded SCR 30, 000 for ancillary costs to treatment. In total SCR 215, 000 with costs.

JUDGMENT

TWOMEY CJ

[1] The Plaintiff brought an action on 2 September 2019 in delict against the First Defendant. He claimed that on 5 September 2014 while riding his motorcycle at Anse Royale, Mahe, he was hit by the First Defendant’s vehicle No S15655 which was in operation at the material time by the First Defendant. The collision resulted in the Plaintiff sustaining

physical injury and sustaining loss. Further, as a result of the injuries, the Plaintiff claims that he has incurred expenses for medical treatment. He now seeks SR300, 000 as compensation for his physical loss and for the disability that he sustained due to the accident. He also seeks a further SR133, 530 for treatment overseas and future medical expenses.

- [2] There, being no defence filed to the plaint the matter was set for *ex parte* hearing on 20 January 2020. On that day, Counsel for the First Defendant appeared and stated that he was instructed by H. Savy Insurance and that the company felt morally and legally responsible to appear for the First Defendant who had accepted liability for the accident. The hearing was set aside and the First Defendant given time to file a defence.
- [3] A statement of defence was subsequently filed with the H. Savy Insurance Co Ltd added as Second Defendant. There was no objection to the joinder of the party and no need under section 114 of the Seychelles Code of Civil Procedure to amend the pleadings or serve the Second Defendant with the amended plaint.
- [4] The statement of defence puts the Plaintiff to strict proof of his averments regarding the accident. The Defendants also aver that the Plaintiff has exaggerated the loss he has suffered and he is put to strict proof of the same.
- [5] In his testimony, the Plaintiff aged 58, explained that on the day of the accident he was riding his motor bike from Anse Royale to Baie Lazare. When he arrived at Sweet Escott Road, a car hit him and he fell down. It was a green Honda Matrix registration number S15656 driven by the First Defendant. He was thrown about 15 metres and suffered scrapes all over his arms and his legs. An ambulance was called and he was taken to Anse Royale Hospital for dressings. He had dressings for over three months. For the past six years however, he has had a persistent injury where his ankle remains swollen and is painful especially if he stands. He cannot work as the ankle swells and the bone becomes painful.
- [6] He has been for MRI, X-ray, CT scan imagery and is due for more scans. He received a medical report of his injuries, which he exhibited. He was injected in his leg and saw

several specialists, the last told him he would always have pain. He has been told to seek specialist treatment in Sri Lanka. He has difficulty walking still. He had a course of acupuncture as well which helped him to relax. He has been back and forth for all types of treatment in town and in Anse Royale and he was facilitated by his son-in-law's taxi for this purpose.

[7] Before his accident, he had been gainfully employed as a mechanic and panel beater. After the accident he received SR 2, 500 monthly but this amount was increased to SR 5, 750 monthly.

[8] In cross-examination, he accepted that he had received no fracture to his leg. He also stated that he was not involved in a previous accident. He accepted that the treatment he sought was available locally but that he preferred to have it done overseas. He accepted that he had been made an offer of settlement by the Second Defendant for SR 35, 000. He denied he was exaggerating his claims.

[9] Mr. Sheldon Morel also testified and confirmed that the accident had meant his father-in-law going to Anse Royal Hospital from where he had collected him to bring him home. He subsequently transported him to different hospitals for treatment. He had kept a running account of the cost of the transportation. The trips came to SR 11, 300 altogether. In cross-examination, he accepted that he had only received a taxi licence in 2015 and had been unlicensed before. He denied transporting the Plaintiff because he was his father-in-law. He had not received money at the time but had been promised that he would be paid when the Plaintiff's claim was settled.

[10] Mr. Keven Furneau, the Assistant Claims Manager for the Second Defendant testified. He stated that the First Defendant accepted liability to the Second Defendant for the accident with the Plaintiff. They had received a medical report from the Plaintiff and the report indicated that the Plaintiff had only sustained minor injuries and so offered SR 5, 000 in settlement of the claim. The offer was rejected, a revised offer of SR 25, 000 was made, and it was again rejected. Finally, after negotiations with the Plaintiff's Counsel SR 35, 000 was offered. This too was rejected. They could not accept the total claim of SR 433, 530 from the Plaintiff.

- [11] In cross-examination he stated that he was aware of only one medical report dated 16 March 2015 and that he was not aware that the Plaintiff was still having to treat his injuries in 2014 as they had not been provided with supporting documents. He stated that he was not aware of the report dated 22 March 2017, which states that the Plaintiff had sustained a calcaneal fracture.
- [12] Counsel for the Defendants has submitted that liability is not in issue in this case, only the quantum of damages. In this respect he has cited a number of authorities from 1997 to 2018 in which sums ranging from SR1, 000 to SR10, 000 were awarded by the Court for injuries to ankles, tibia or fibula. He has also submitted that the medical records produced by the Plaintiff do not show residual disability and that the corporal loss is minimal given the fact that the bodily injuries are not at all severe.
- [13] With regard to the fares to Mr. Sheldon Morel, these were not actually spent and in any case, if they were they were for an unlicensed service, which cannot therefore be reimbursed. In respect of the claim for overseas treatment, the Defendants have submitted that the Plaintiff has failed to establish that his injuries require overseas treatment.
- [14] Liability is not an issue in this case –only quantum of damages to be awarded.
- [15] I note the contents of the medical documents. The x-rays taken initially show no fracture or dislocation to the foot or ankle, however the orthopaedist in his medical report states that the MRI showed “anterior process calcaneal fracture associated with stress related marrow edema of the talus and subtalar ligaments spring edema and partial spring deltoid ligament injury.”
- [16] The medical reports have not been challenged but they have not been explained as the parties accept that the pandemic has resulted in the doctor who wrote the report being stuck overseas and unable to travel to testify. Parties had accepted to both submit on the scientific evidence in this case but little meaningful literature has been forthcoming from the Defendants on this issue while the Plaintiff has chosen not to submit at all.
- [17] In the circumstances, I can do little apart from using comparative awards of recent times. I note that a calcaneal fracture is a break in the heel bone.

[18] In *Labiche v FS Management Trading* (CS 109/2018) [2019] SCSC 529 (24 June 2019), for an ankle injury this Court taking into account the deformity to the ankle awarded the sum of SR250, 000 and a further sum of SR100, 000 for moral damages. In *Laporte v Rosebelle (Pty) Ltd* (CS 63/2018) [2019] SCSC 1135 (04 December 2019), the Court granted SCR 225, 000 for a fracture and deformity to the plaintiff's left leg and further SR75, 000 for pain and suffering, loss of enjoyment of sports and mobility impairment. In *Otieno v SPTC* [2017] SCSC 85, the Plaintiff sustained a broken left leg and continued to have a limp. He was awarded a global sum of SR180, 000.

[19] The Plaintiff's limp and swollen ankle was obvious to see even on the day of trial. It is clear that the injury has not healed and will require further treatment. For his injury, therefore I award the Plaintiff the sum of SCR 80, 000 noting that he had only claimed SR100, 000. I also believe that the Plaintiff suffered pain and continues to suffer pain and for this moral damage I award him SCR100, 000.

[20] With regard to his travel expenses without going into the finer details of the bar to claims resulting from the principle of *ex turpi causa* (that is, in this case travelling in an unlicensed taxi) there is no proof at all that the sums of money claimed were spent. I do however accept that he had to be transported to and fro for treatment and petrol costs would have been involved and for this I award him the sum of SCR5, 000. With regard to the claim for future medical expenses abroad, these were not entirely made out. The Plaintiff talked of traveling abroad for treatment but admitted that the treatment could be provided locally. In the circumstances all that can be awarded is a further sum of money to compensate him for any additional ancillary expenses locally that he may be put through bearing mind that the medical treatment would be borne by the health services. In this respect, I award him a further SCR30, 000.

[21] In the circumstances, I therefore order the Defendants to pay the Plaintiff the sum of SR 215, 000 with costs.

Signed, dated and delivered at Ile du Port on 29 September 2020.

M. TWOMEY
CHIEF JUSTICE