

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2021] SCSC... ..  
CS 150/2019

In the matter between:

**AE**  
**A minor herein represented**  
**By her mother MD**  
*(rep. by Karen Domingue)*

**Plaintiff**

and

**GP**  
*(rep. by Bernard Georges)*

**Defendant**

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**Neutral Citation:** *AE v GP* (CS 150/2019) [2021] SCSC ..... (10<sup>th</sup> May 2021).  
**Before:** Pillay J  
**Summary:** Delict – burden of proof on Defendant when a prior criminal conviction is admissible in civil trial  
**Heard:** 7<sup>th</sup> September 2020  
14<sup>th</sup> September 2020  
18<sup>th</sup> September 2020  
**Delivered:** 10<sup>th</sup> May 2021

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**ORDER**

- [1] Judgment is entered in favour of the Defendant. The Plaint is dismissed.
- [2] Each side shall bear their own costs.

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**JUDGMENT**

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**PILLAY J**

[3] The Plaintiff seeks a judgement in her favour and the sum of SCR 2, 750, 000.00 from the Defendant with interests and costs.

[4] The Plaintiff claims as follows:

*(1) The Plaintiff is a minor and a student at the [REDACTED] School and the Defendant is her neighbour.*

*(2) On 13<sup>th</sup> May 2015 whilst cutting grass at his place the Defendant failed to take proper precautions against any probable danger thereby hitting the Plaintiff with a stone in the left eye.*

*(3) At the time of the incident the Plaintiff was 13 years old.*

*(4) The Defendant was charged in CR 419 of 2016 with the offence of Reckless and Negligent Act against the Plaintiff. The Defendant was convicted and sentenced to a fine of SR 10, 000.00 on the 5<sup>th</sup> July 2017. The Defendant appealed the conviction and sentence in the Supreme Court case, CN 19 of 2017. The appeal was dismissed and the sentence of the Magistrates Court was re-affirmed by the Supreme Court on 8<sup>th</sup> march 2018.*

*(5) Following the incident as pleaded in Paragraph 2 above the Plaintiff's eye-sight in her left eye started to deteriorate. Prior to the incident the Plaintiff had no visibility issues in her left eye.*

*(6) The Plaintiff has been to several doctors and specialist since the incident and had regular follow-ups with the eye specialist at private clinics and at the Seychelles Hospital.*

*(7) In July 2008 the vision of the Plaintiff was 0.15 and according to a report from Vision Care dated 5<sup>th</sup> July 2018 the Plaintiff's vision is still deteriorating. In addition the Plaintiff was and is having throbbing pain on the side of her head since the incident of 13<sup>th</sup> May 2015.*

*(8) In July 2018 the Plaintiff was examined at Dr Murthy's Medical and Gastro Clinic where she was diagnosed with Left Eye Traumatic Optic Neuropathy. According to the report given by the Ophthalmologist the Plaintiff's prognosis was poor and she will need to be reviewed once in every six months.*

(9) *The Plaintiff avers that the vision in her left eye was 100% before the incident of 13<sup>th</sup> May 2015.*

(10) *As a result of the Defendant's reckless and negligent act the Plaintiff suffered loss of sight in her left eye, loss of amenities, pain and suffering.*

(11) *The Plaintiff has further suffered loss and damages which the Defendant should compensate the Plaintiff for.*

**PARTICULARS OF PAIN AND SUFFERING AND LOSS AND DAMAGES**

<i>a. Loss of sight in the left eye and continuing deterioration of eye sight</i>	<i>SCR 1, 000, 000</i>
<i>b. Pressure on right eye which will result in impairment of eye sight of right eye</i>	<i>SCR 500, 000</i>
<i>c. Pain by the side of the head</i>	<i>SCR 250, 000</i>
<i>d. Loss of amenities and enjoyment of life because of permanent injury</i>	<i>SCR 1, 000, 000</i>
<b>Total</b>	<b>SCR 2, 750, 000</b>

(12) *The Plaintiff is desirous that the Defendant makes good her loss and damages as averred in Paragraph 11 above.*

[5] The Defendant accepts that he was convicted and sentenced in CR 419 of 2016 and CN 19 of 2019 however he claims that he was innocent.

**The Evidence**

[6] Herman Holst testified that he is an optometrist and owns the business called Visioncare. He does eye tests, vision tests and also looks at the health of the eyes. It was his evidence that the Plaintiff first attended his clinic on 25<sup>th</sup> September 2014. Her vision on the left and right was about the same, about 100%. She came back to Visioncare on 7<sup>th</sup> July 2017. The visual acuity then was still one hundred percent in the right eye but 40 % in the left eye.

[7] Dr Manasa Balajhi testified that she is employed in Dr. Murthy's eye clinic for three years. She specializes in ophthalmology which she described as a branch of medical science which deals with eye, nose and all the problems relating to the eyes and nose and up to the brain. She is super specialized in retro-retina. She examined the Plaintiff on 9<sup>th</sup> July 2018. It was the first and last time she saw her. She came with a complaint of an eye

defect in her left eye. Various tests were done amongst them a scan which showed that the optic nerve in the left eye is dead. It was her evidence that damage to the optic nerve could be a result of trauma, diabetes, hypertension, glaucoma, multiple-sclerosis and tumours but these would cause bilateral damage and not only for a single eye. She opined that for unilateral damage the first indicator would be trauma. Such trauma would have to be from grievous injury. She gave examples such as a stick injury, falling from an altitude, a car accident resulting in the person being hit on side of the face where the optic nerve is involved. She did not rule out being hit by a stone in the eye while someone is cutting grass. She however explained that the size of the stone mattered and the speed. She compared that to a small bullet fired from a rifle. It was her evidence that had there been trauma of that degree there would have been signs on the eye such as bleeding inside the eye or discolouration of the eye which would have been visible up to a month after the trauma. She explained that the damage to the optic nerve is not from something sharp but from something blunt, a hard hit, or a fall, or a car accident.

[8] The Plaintiff's evidence is that she is 18 years old and lives at [REDACTE]. The Defendant is her neighbor. On 13<sup>th</sup> May 2015 the Defendant hit her with a rock while he was cutting grass. It was around 2 in the afternoon. It was her evidence that she was sweeping the verandah. When the Defendant saw her he went backwards and that was when a rock hit her. She went inside and told her grandmother. After sometime, when he was going to work her brother saw her crying and went and told the Defendant. She called her mother who was working. The Police came to the house. That night the Police gave them a paper to go to the doctor. It was her evidence that she has been affected physically and mentally whereby each time she sees the Defendant it's like a trauma to her. She stated that she always feels the pain which is worse when she is sick.

[9] In cross examination she stated that following the alleged incident her right eye is also being affected in that it sometimes become blurry. She accepted that she had in examination in chief stated that she saw the Defendant removing diesel from his grass cutting machine but explained that she got hit in only one eye and the other one was functioning normally. She further added that she did not lose her vision that day but lost it during the 5 years. She made clear that her "other eye was still good even though the other one was painful".

[10] In re-examination she stated that she went to the Police on the day of the incident and then the next day she went back and gave him the paper which the doctor had given her. According to her evidence it was the same day that she had a plaster on her eye. She stated she got confused where her left or right eye was but she showed the police officer with her fingers which eye she was hit in.

- [11] MD testified that she is the mother of the Plaintiff. She was at work on 13<sup>th</sup> May 2015 when she received a call from her daughter that GP was cutting grass and had hit her in the eye. Since was already at her desk stamping passports of incoming passengers she made arrangements for her sister to take the Plaintiff to the hospital. When she returned home she found her daughter crying saying that she had pain in her eye. The next day she was still suffering from headaches and her eye was painful. Almost all the time her daughter tells her that her head, her eyes hurt. It was her evidence that since Audrey is using the other eye more she says there is pain in it.
- [12] In cross examination she stated that on the night of the incident her daughter was complaining and she could see the impact of where she had been hit. She could see that the eye is not normal.
- [13] The Defendant was charged in the Magistrates' Court in case CR 419/2016 on a charge of reckless and negligent act contrary to section 229 (g) of the Penal Code and convicted after his not guilty plea and trial. He subsequently appealed his conviction which was upheld by the Supreme Court in Criminal Appeal 19 Of 2017. Both the Magistrates Court file and the Supreme Court files were produced inclusive of the judgments in both cases.
- [14] Dr. Ronald Barbe testified that he is a certified ophthalmologist since 2010 and works at the eye clinic in the Ministry of Health. He stated that he saw the Plaintiff in late 2015. She came with a history of trauma in the left eye. The Plaintiff complained that she had been hit by a flying object from a grass trimmer. His evidence was that she had reduced vision but other damages that he would expect from being hit in the eye with something was laceration to the eye and foreign bodies stuck in the eyes, but he saw none of that. She was treated as a case of blood injury to the eye. It was his evidence that the Plaintiff had attended the eye clinic on several occasions. It was his evidence that the Plaintiff had done CT scan as well as MRI but nothing could be found that could explain her loss of vision especially in connection with the trauma. According to the report dated 23<sup>rd</sup> February 2018 the Plaintiff was diagnosed with left eye optic neuropathy. Dr Barbe went on to explain that neuropathy is sometimes referred to as 'idiopathic' because doctors cannot put a finger on what exactly caused the sickness.
- [15] The Defendant's evidence is that he owns a property behind the house occupied by the Plaintiff and her family. He sometimes cut the grass there using a grass cutter with nylon string that spins. On the 13<sup>th</sup> May 2015 he was cutting grass on the said property. He stated that he never saw the Plaintiff that day. It was his evidence that there has always been animosity between the two sets of neighbours. It was when he was going to work

that the Plaintiff's little brother told him that he had hit the Plaintiff when he was cutting the grass. He testified that the Police sought a statement from him 9 months later.

- [16] Lisa Chetty testified that she is an optometrist. She qualified in 2003 but was working with Mr. Micoock when she was still training from 1997. In 2006 she started work with the hospital on a weekly basis and did so for 3 years. Throughout the time she saw patients who presented to the hospital with eye complaint, diagnosed and determined whether they needed to see an ophthalmologist or not and sometimes treated them. On a weekly basis she examined patients who had been hit in the eye with metal, tiles and while cutting grass. Usually patients who reported with a complaint of having been hit in the eye would complain of pain first of all, feeling that there is a foreign object in the eye and the eye would be red, watery, and sensitive to light. She accepted that she had not examined the Plaintiff. She explained the difference between the patient complaining of pain and the doctor finding tenderness on examination as the difference matters in what is seen afterwards and what doctors will be guided to look for. She agreed that if a person reported to the doctor with a history of being hit in the eye, the presenting symptom would be the feeling of discomfort rather than a headache.
- [17] Dr Vehsna Pillay testified that she is a medical doctor and she was a Senior Medical Officer at the Ministry of Health until she resigned in 2016. On being item 1 she agreed that it was her signature on the document. She stated that the patient came in with a history of having been hit in the left eye. On being asked if she clarified before the Magistrate's Court that she had made a mistake in the report when she wrote right eye she stated she could not recall. She accepted the possibility of there being a mistake on the report with regard to the right eye but went on to say that it was unlikely. She explained that she always makes particular attention to report what she sees the problem as is that drilled into them from medical school. It was her evidence that based on her examination findings it is unlikely that there was a lesion there to begin with.
- [18] A locus in quo was conducted on 7<sup>th</sup> September 2020 and attended by all parties. It was noted that the Defendant's property is just a slope behind the Plaintiff's house. Indeed the Plaintiff's house is just below the slope. It was agreed that the Plaintiff was about 6 metres from where the Defendant was cutting grass.

### **Submissions**

- [19] The Defendant's counsel submitted that the action of the Defendant of cutting grass was not responsible for injuring the Plaintiff as alleged, and that the claim is vexatious and is

made maliciously as the Plaintiff and her family have, for many years been harassing the Defendant and his family.

[20] Counsel submitted that the Defendant admits that he was charged with the offence of Reckless and Negligent Act and that he was an unrepresented accused in the case CR 419 of 2016 wherein he was found guilty and sentenced to a fine. He submitted that nonetheless the Defendant maintains his innocence and submits he did not injure the Plaintiff.

[21] It was his submission that the “vision loss that the Plaintiff is allegedly experiencing is not as a result of having been hit in the eye, but instead is due to another unknown cause that is independent of any act or omission of the Defendant.

[22] Counsel referenced the evidence of Dr. Ronald Barbe, the Plaintiff’s expert witness; Lisa Chetty, the Defendant’s expert witness, as well as Dr. Pillay, who was the doctor on duty when the Plaintiff reported to the casualty as casting doubt on the assertions of the Plaintiff.

[23] Counsel relied on paragraph 17 of the case of **Jean-Claude Dogley v Petite Anse Development Ltd (2012)** wherein it was stated that “the precise nature of the ‘faute’ must be proved and the burden lies on the Plaintiff” for his proposition that the Plaintiff has not proved the precise nature of the ‘faute’ in that she has not proved whether she was hit in the left or the right eye. It was further counsel’s submission that she “failed to give a coherent account regarding the injury that she sustained as a result of a ‘faute’.

[24] Counsel also relied on the case of **Denis v Ryland (2016) SCSC 10** to support his argument that the Plaintiff has not proven the causal link between the act/omission and the injury.

## **The Law**

[25] The plaintiff’s action herein is based on fault. Hence, the principles of law applicable to this case are that which is found under Article 1382(1), (2) & (3) of the Civil Code of Seychelles. This Article reads thus:

(1) *“Every act whatever 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 a positive act or omission”*

(3) *“Fault may also consists 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”*

[26] Article 1383 (1) in part provides that:

*“...every person is liable for the damage it has caused not merely by his act, but also by his negligence or imprudence.”*

[27] In essence the Plaintiff has to show faute on the part of the Defendant, damage and a causal link between the two.

[28] The burden is on the Plaintiff to prove her case on a balance of probabilities as was aptly defined by Lord Hoffman in the case of **Re B [2008] UKHL 35** using a mathematical analogy:

*"If a legal rule requires a fact to be proved (a 'fact in issue'), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened."*

[29] The difference between succeeding on the balance of probabilities and failing on the balance of probabilities was explained in the case of **Miller v Minister of Pensions [1947] 2 All ER 372** where Denning J said:



*"If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not."*

[30] It is important for one to keep in mind the words of Baroness Hale in **Re B** above,

*"In our legal system, if a judge finds it more likely than not that something did take place, then it is treated as having taken place. If he finds it more likely than not that it did not take place, then it is treated as not having taken place. He is not allowed to sit on the fence. He has to find for one side or the other. Sometimes the burden of proof will come to his rescue: the party with the burden of showing that something took place will not have satisfied him that it did. But generally speaking a judge is able to make up his mind where the truth lies without needing to rely upon the burden of proof."*

### **The Issues**

[31] The Defendant's counsel has identified the following issues for determination:

- (i) Was the Plaintiff hit in the left eye with a stone as a result of the Defendant's act and/or omission?
- (ii) If yes, did the incident cause the vision loss that the Plaintiff is experiencing; in other words can the Plaintiff establish a causal link between the incident and the injury being loss of eye sight that resulted in damages to the Plaintiff?
- (iii) If yes, how much in damages should the Court award the Plaintiff?

[32] I agree that these are indeed the issues for the Court's consideration.

### **Analysis**

[33] With the above in mind we come then to the first issue for determination: was the Plaintiff hit in the left eye with a stone as a result of the Defendant's act and/or omission?

[34] From the outset it has to be said that there are inconsistencies in the Plaintiff's evidence. I note that according to the Plaintiff the incident occurred at 2 in the afternoon. However the medical report shows that the Plaintiff reported to the casualty unit at 6.20pm where

she was examined and released. If the injury was so serious and the Plaintiff in pain why wasn't she taken to hospital earlier.

[35] Furthermore the attending doctor at casualty's only finding was that there was "some pain tenderness when you press the right limbus..." Yet the Plaintiff's mother stated that that night when she got home she could see where the impact occurred on the eye and that the eye was not normal. All the doctors agreed that in order for the optic nerve to be damaged trauma is necessary and damage on the anterior part is required. I accept the evidence of the doctors that had the Plaintiff been hit in the eye with a stone there would have been visible evidence of the damage on the front of the eye on examination. How is it then that the attending doctor found no evidence of visible impact on the eye whereas the Plaintiff's mother saw visible signs of impact when she got home?

[36] According to the Plaintiff "when the rock hit me I saw my eyes starting to blur all of a sudden." It was her evidence that the rock hit inside her eye, on the side near the pupil. It was further her evidence that she has pain in her head, "an irritating and tiring pain". In cross examination she however explained that her other eye was functioning normally on the day in question (after she had been allegedly hit) to the point that she saw the Defendant go back up the slope to his house, remove diesel from the grass cutter and then go off to work later, all this after she had been allegedly hit. It does make one wonder. The trauma that all the doctors spoke of, even if it did not cause immediate injuries to the front of the eye would have had to be of such force that she could not have seen the Defendant's actions after the fact or for that matter such detailed action as removing diesel from the grass cutter. From the evidence of the doctors I am led to believe that there would have been a degree of pain immediately after being hit that would have at the very least prevented her from seeing or taking note of anything that happened after she was hit.

[37] It is further noted that Dr. Pillay in her notes on 13<sup>th</sup> May 2015 made reference to the complaint of pain in the left eye for one hour. The doctor went on to note that "tenderness on palpitation of the right temporal corner of limbus". It was also in evidence that the police officer who took down the statement referred to the right eye. In my view it is not

beyond the realm of possibility that a police officer may make a mistake while taking down a statement of a victim. It is also possible that a doctor may make a mistake in a report. However I find it hard to believe that the police officer would have made such a mistake when the victim was sat opposite her with a plaster over the affected eye. Even harder to believe is that the doctor attending to the victim at the casualty unit on the day in question would make the same mistake as the police officer of saying it was the right eye if indeed the examination showed it was the left eye.

[38] I note the judgment of the Supreme Court on appeal against the Magistrates Court judgment. At paragraph 4 the Court accepts the medical report that was produced that indicated that “the patient was examined on the 13<sup>th</sup> May 2015 and had tenderness on the temporal side of the right eye”. With that finding how can this Court now accept the Plaintiff’s evidence that she was in fact hit in the left eye and not the right eye as was accepted in the criminal case?

[39] The Plaintiff seeks to rely on the conviction entered against the Defendant in Magistrates’ Court case CR 419 of 2016 and subsequently the appeal in Supreme Court case CN 19 of 2017 upholding the conviction by the Magistrates Court in order to show that the Defendant hit the Plaintiff in the eye with a stone while operating his grass cutter.

[40] The admissibility of criminal convictions in civil trials was clearly explained in the case of **Solo v Payet (CS 24/2014) [2016] SCSC 479 (08 July 2016)** by CJ Twomey. I find the following paragraphs of relevance:

[13] *The Plaintiff relied for proof of her case largely on a decision of a Court of criminal jurisdiction. Article 1351 of the Civil Code of Seychelles provides in relevant part:*

3. *The admissibility and effect of judgments given by a Court of criminal jurisdiction shall, in civil matters be governed by and decided in accordance with the principles of English law.*

[14] *The applicable English law on this issue was explored by Perera J (as he then was) in Saunders and Or v Loizeau (1992) SLR 214. The rule against the inadmissibility of such evidence to prove a civil case was contained in Hollington v Hewthorn (1943) KB 587. The rule however was*

abrogated by section 11(1) the English Civil Evidence Act of 1968 which made admissible a conviction for proving that a defendant in a civil action committed the act for which he was convicted. The Act was adopted in the jurisprudence of Seychelles by virtue of the fact that applicable English law in Seychelles in terms of evidence is that in force when Seychelles became independent on 1<sup>st</sup> January 1976 (See *Kimkoon and Co v R* (1965) SCAR 64, *Vel v Tirant* and or (1978) SLR 9, *Bouchereau v Francois* and ors (1980) SLR 77).

[15] The Seychellois Evidence Act by amendment in 1990 imported this statutory provision of the English Civil Evidence Act 1968 into our laws. Section 29 of our Evidence Act provides in relevant part:

(1) In a trial the fact that a person, other than, in the case of a criminal trial, the accused, has been convicted of an offence by or before any court in the Republic shall be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in the trial, that that person committed the offence or otherwise, whether or not any other evidence of his having committed that offence is given.

(2) In a trial, other than in a civil trial for defamation, in which by virtue of this section a person, other than, in the case of criminal trial, the accused, is proved to have been convicted of an offence by or before a court in the Republic, he shall be taken to have committed that offence unless the contrary is proved.

...

(5) Where evidence that a person has been convicted of an offence is admissible under this section, then without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based

(a) the contents of any document which is admissible as evidence of the conviction; and  
(b) the contents of the information, complaint or charge sheet on which the person was convicted, shall be admissible in evidence for that purpose.”

[16] The effect of this statutory provision is that the contents of the file of proceedings of the criminal trial before the magistrate court proves that

*the Defendant committed the offence of grievous harm on the Plaintiff. Section 29(2) shifts the legal burden onto the Defendant to show on a balance of probabilities she has not committed the offence.*

- [41] In light of paragraph 16 of the above decision the Defendant, in the case at hand, with the previous criminal conviction having been produced, therefore has the burden of proving on a balance of probabilities that he did not commit the offence.
- [42] In terms of proof that he did not commit the offence, the Defendant seeks to rely on the evidence of the expert witnesses. Firstly the evidence of the doctor who examined the Plaintiff at the casualty on the day of the alleged incident, Dr Pillay. Secondly the evidence of the Plaintiff's own expert witness Dr. Barbe and lastly the evidence of the defence's expert witness Lisa Chetty.
- [43] For her part Dr. Pillay, who examined the Plaintiff at the casualty unit stated that though the Plaintiff complained of being hit in the left eye, the left eye showed no signs of injury whereas the right eye showed signs of tenderness. When pressed that she was mistaken as to the eye that was injured, the witness maintained that she had made no mistake by explaining the normal process she uses to identify the left from the right when examining a patient.
- [44] Dr Roland Barbe for his part testified that for "damage to the optic nerve which is at the very back of the eye he would expect also damage to the front part of the eye". He explained that the optic nerve could be damaged without any signs of trauma on the anterior part of the eye but he stated that the probability of that happening is low. Dr Barbe explained at length that the optic nerve is "deep inside the socket so for it to get damage there must have been serious damage to the front part of the eye." He further explained that he "would have seen an laceration would have seen that the front part soft...eye is disorganised its bleeding...if these injury is missing [in] the front of the eye then probability of damaging the optic nerve is very low."
- [45] Dr. Manasa also testified that injuries that would cause damage to the optic nerve would have to be grievous in nature drawing comparisons between being hit in the eye with a stone from a grass cutter and being hit by a small bullet fired from a rifle she stated that

there would be signs of the trauma on the outside of the eye by way of bleeding or discolouration of the eye amongst other signs.

- [46] Hermann Holst for his part testified that he had seen a patient on the Friday before his testimony before the Court who had been “hit with a tennis racket and nothing was seen from outside. She was treated but inside the eye was kaput, was broken.”
- [47] For her part Dr. Chetty testified that almost every week a patient attends to her clinic with trauma from a stone ejected by a grass cutter, from metal or grinding tiles. Usually the complaint is pain first of all, the feeling that there is a foreign object in the eye and the eye will be red, watery and sensitive to light. In comparison the Plaintiff’s main complaint is headaches.
- [48] The example given by Mr. Holst, to my mind, is not comparable to the injury the Plaintiff claims she sustained as opposed to the example of Dr. Chetty.
- [49] I found to be of great interest the analogy used by Hermann Holst that “if you drive a car passed a guy that is cutting grass and he does not hear you and just by accident this grass cutter hit a stone, my car door will have a dent; so I imagine a stone with that force could damage...” which to my mind put the facts in context. I note that he is not an ophthalmologist but an optometrist as well as his comments that “I would say hit like this on the eye can cause serious damage if this is what you want me to say, what you want to hear” and consider his evidence in that light. However the above analogy I believe is not affected by his comments above or his professional qualification.
- [50] In conclusion, even if one was to consider the mistake of the doctor and the police officer with regard to the right eye being affected as pure coincidence, however with the evidence of all the doctors that there would have been damage to the outside of the eye if the Plaintiff had been hit in the eye with a stone from a grass cutter in operation, and in light of Dr Pillay’s failure to find any damage to the outer eye, it is doubtful that the Plaintiff was struck in the eye with a stone from a moving grass cutter.

- [51] With that I find that the Defendant has discharged the burden and shown that on a balance of probabilities he did not commit the offence. Conversely he is not liable to the Plaintiff under Article 1382 of the Civil Code.
- [52] Even though the above finding is sufficient to dismiss the Plaintiff's case I will proceed to consider the issue of causation which in my view is also problematic.
- [53] Dr. Manasa explained that there are different causes for damage to the optic nerve. It was her testimony that for unilateral damage the first indicator would be trauma. According to Dr Manasa other causes such as diabetes, hypertension, glaucoma, multiple-sclerosis and tumors would cause bilateral damage, to both eyes simultaneously. The Plaintiff has none of those conditions according to her.
- [54] In Dr. Manasa's opinion the damage to the Plaintiff's optic nerve in her left eye is not from something sharp but from something blunt, a hard hit, or a fall, or a car accident. She however accepted that if there had been trauma of such a degree as being hit in the eye with a stone moving at high speed from a grass cutter in operation there would be signs on the eye such as bleeding or discolouration.
- [55] It is noted that she did not examine the Plaintiff on the day of the alleged incident but rather a few years later whereas Dr. Pillay who examined the Plaintiff on the day in question found no signs of damage on the outside of the eye. Furthermore Dr. Manasa examined the Plaintiff only once.
- [56] Dr. Barbe who had the benefit of examining the Plaintiff on a number of occasions since late 2015 produced a report dated 23<sup>rd</sup> February 2018 according to which the Plaintiff was diagnosed with left eye optic neuropathy. Dr. Barbe explained that it is also referred to as 'idiopathic' because doctors cannot put a finger on what exactly caused the sickness. In effect doctors could not explain the cause of the loss of vision in the Plaintiff's left eye.
- [57] For her part, in cross examination the Plaintiff stated that she is having vision impairment in her right eye now. She stated that sometimes it becomes blurry and accepted that it is following the same pattern as her left eye. Her explanation for this was "because [she] got

hit in [her] left eye and ...putting pressure on [her] right eye and therefore it is leading to be like [her] left eye.”

[58] Dr Manasa described this concurrent loss of vision in the right eye as sympathetic ophthalmia meaning the inflammation of one eye due to injury or disease of the other eye. According to Dr. Barbe though, it was not possible for the other eye to be affected because of strain. He stated that a lot of people have only one eye and can see and do not know about it until something happens to that good eye. He theorised that the Plaintiff’s other eye (the right eye) is in danger because of an autoimmune problem. With the diagnosis for the left eye being optic neuropathy it leaves open the likelihood that the loss of sight could be due to an auto immune problem as well.

[59] Taking into account the evidence of Dr. Manasa and Dr. Barbe, along with that of Dr. Pillay, the cause of the loss of vision as alleged by the Plaintiff is left very much in doubt, more so as the Plaintiff describes the current loss of vision in the right eye as following the same pattern as her left eye.

[60] In view of the above I additionally find that the Defendant has shown that it is more likely than not that the loss of sight in the left eye is due to a reason other than being hit in the eye. The Plaintiff has not shown that it is more probable than not that being hit in the eye, which I am not satisfied happened, is the cause of the loss of sight in her left eye.

[61] On the basis of the above, judgment is entered in favour of the Defendant. The Plaintiff is dismissed.

[62] Each side shall bear their own costs.

Signed, dated and delivered at Ile du Port on ...

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Pillay J