

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 49

CS 148/2019

In the matter between:

GUYTO NOURRICE

(rep. by S. Rajasundaram)

Plaintiff

and

STEVE MICHEL AGRIPPINE

(rep. by Guy Ferley)

Defendant

Neutral Citation: *Nourrice v Agrippine* (CS 148/19) [2021] SCSC 49 (10th March 2021)

Before: Pillay J

Summary: Claim of money for injuries arising from a car accident – guilty plea in the Magistrates Court on two criminal counts of unlawful driving and negligent driving - quantum

Heard: 3rd July 2020 and 9th October 2020

Delivered: 10th March 2021

ORDER

Judgement is entered in favour of the Plaintiff in the sum of SCR 150, 000.00 with costs of the action.

JUDGMENT

PILLAY J

[1] The Plaintiff seeks an order of the Court for the Defendant to pay the Plaintiff the sum of SCR 750, 000.00 as a result of the faute he committed.

The Claim

3. The Plaintiff avers that on or about 29th November 2017 at around 11.45am in the market street, Victoria while walking, the defendant negligently drove his vehicle bearing Registration Number S22765 and seriously hit the Plaintiff in that the Plaintiff sustained serious leg injuries.
4. The Plaintiff further avers that the defendant not only negligently drove and caused the accident, he drove the vehicle S22765 in defiance of NO ENTRY traffic sign and attempted to gain entry/access inside the market street despite the traffic warden's warning.
5. The Plaintiff as a result of the Defendant's negligent and unlawful driving on the prohibited road suffered injuries, multiple fractures in his right ankle and was subject to Open Reduction and Internal Fixation surgery due to the multiple fractures that resulted in fixing metal plate and screws in his right ankle on 29th November 2017.
6. The Plaintiff avers that it was due to the defendant's fault and serious omission of law while negligently drove the vehicle the Plaintiff is still suffering with trauma and post surgical inconvenience besides having lost his original strength and stamina in his leg.
7. The Plaintiff's sufferings, inconvenience and trauma continues as a result of surgical patient in the hospital while he was discharged only on 10th December 2017.
8. The Plaintiff's post-surgical procedure, follow-up and physio-therapy continued few times every month for one year from the date of discharge and it is the defendant's negligent and unlawful driving were the cause of the Plaintiff's sufferings.
9. The metal plate and screw fixed inside to cure the multiple fractures still remain inside the body of the Plaintiff and this is causing great degree of inconvenience to the Plaintiff.
10. The Plaintiff is also partially disabled as he lost the original strength and stamina in his right leg. This resulted in loss of income as he could not work as he used to be in the past.

11. The Defendant has been charged under two counts of criminal offence for the offence of unlawful driving and negligent driving by the Republic in the Magistrate’s Court (T 586/18) and upon his own plea of guilty, the Defendant was imposed of fines namely SR3, 000.00 and SR5, 000.00 respectively.

Particulars of loss and the claim of compensation.

<i>(1) For trauma, suffering, pain and anxiety</i>	<i>SCR 250, 000.00</i>
<i>(2) For the loss of original strength and stamina</i>	<i>SCR 100, 000.00</i>
<i>(3) For the loss of income and inconvenience</i>	<i>SCR 300, 000.00</i>
<i>(4) Moral damages</i>	<i>SCR 100, 000.00</i>
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<i>Total</i>	<i>SCR 750, 000.00</i>

- [2] The Defendant initially denied the claim however counsel went on to formally admit liability since there are two criminal convictions. However he disputed the quantum claimed.
- [3] Whereas the Plaintiff called Dr Manoo and Dr Betsy to explain the extent of the injuries he suffered, the Defendant testified in his own defence.
- [4] Dr Thelma Betsy who is employed by the Seychelles Health Care Agency since 2015 testified that since 2017 she has been based in orthopaedics. She testified that the patient Guyto Nourrice was seen on 29th November 2017 at 12.50. He came to the casualty with complain of pain in the right ankle, swelling and deformity. After examination and x-ray, he was diagnosed with trimalleolor fracture of the right ankle. He was admitted to the ward and prepared for surgery which was done on 1st December 2017. He was then treated on the ward and discharged on 10th December 2017. Dr Betsy described the fracture as an unstable fracture as there was “one fracture on the outer, inner and on the back of the ankle”. A plate and screws were inserted to fix the fracture. Following his discharge from hospital the Plaintiff was reviewed two months later he complained of pain when flexing and extending his foot whereupon he was advised to do physiotherapy.
- [5] In cross examination the Doctor agreed that after 2018 the patient did not report to the Seychelles hospital again. She stated that after such an injury as that of the Plaintiff “the

bone will heal but definitely it will be weaker than prior to the surgery.” It was also her evidence that the weakness could be permanent “because patient can have swelling that’s persistent every time he will stand for a long time he will have the swelling even if a long time after surgery”.

[6] For his part Dr Manoo testified that he issued the Plaintiff with a certificate to do light duty work. He explained that when the patient came to see him “he was complaining of pain in the right ankle...he said the pain becomes worst on standing for long hours. So usually, if sometimes when you have pain in your joints or anywhere, resting the joints will help to relieve the pain.” He further explained that the ankle “it takes your weight... So standing on it for a long time when it’s painful will make it more painful.”

[7] The Defendant admitted on 19th October 2020 on oath that he was involved in an accident on 29th November 2017. It was his testimony that he was driving vehicle S22765, owned by Bakas, Car Hire. He hit one Guyto Nourrice who as a result sustained injuries. He however stated that he did not agree with the sum of SCR 750, 000.00 that was being claimed.

[8] With liability having been admitted by counsel and then by the Defendant on oath the only issue for the Court to determine is quantum.

Quantum

[9] In the case of **Mondon v Georges & Anor (CS 120/2019) [2020] SCSC 707 (29 September 2020)** wherein the Defendants did not dispute liability but challenged the quantum as being excessive the Chief Justice awarded the Plaintiff the sum of SCR 80, 000 for his injury which was a calcaneal fracture being a break in the heel bone, noting that he had only claimed SR100, 000. She also noted that the Plaintiff suffered pain and continues to suffer pain and for this moral damage awarded him SCR100, 000 plus SCR 5, 000 for transportation costs with an added SCR 30, 000.00 for future medical expenses.

- [10] The decision in **Mondon** above was based on **Labiche v FS Management Trading (CS 109/2018) [2019] SCSC 529 (24 June 2019)**, where for an ankle injury, taking into account the deformity to the ankle, the Court awarded the sum of SR250, 000 and a further sum of SR100, 000 for moral damages.
- [11] The Court in **Mondon** also took into account the decision in **Laporte v Rosebelle (Pty) Ltd (CS 63/2018) [2019] SCSC 1135 (04 December 2019)**, where 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.
- [12] The Court in **Mondon** further considered the decision in **Otieno v SPTC [2017] SCSC 85**, where the Plaintiff sustained a broken left leg and continued to have a limp. He was awarded a global sum of SR180, 000.
- [13] In the instant case the Plaintiff sustained a fracture to the outer, inner and back of the ankle. The resulting damage according to Dr. Betsy could be weakness in the bone as a result of swelling. According to Dr. Manoo long periods of standing could be painful for the Plaintiff as the ankle bears all the body's weight. Indeed the Plaintiff was issued with a certificate for light work duty as a result of the Plaintiff attending the clinic and complaining of pain in the right ankle which becomes worse on standing for long periods.
- [14] In consideration of the above I award a global sum of SCR 150, 000.00 to the Plaintiff.
- [15] Judgement is accordingly entered in favour of the Plaintiff in the sum of SCR 150, 000.00 with costs of the action.

Signed, dated and delivered at Ile du Port on 10 March 2021

Pillay J