

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 106

CS73/2018

In the matter between:

ANTOINE EMMANUEL MADELEINE
(rep. by Anthony Derjacques)

Plaintiff

and

LAND MARINE LTD
(rep. by Ms Edith Wong)

Defendant

Neutral Citation: *Madeleine v Land Marine Ltd* (CS 73/2018) [2021] SCSC 106 (26th of March 2021).

Before: Govinden C J

Summary: Action in delict; no averments and proof of material loss; assessment of moral damage.

Heard: 11th and 18th November 2019; 20th; 24th July 2020 and 22nd September 2020.

Delivered: 26th March 2021

ORDER

A sum of SR 100,000 is awarded to the Plaintiff for moral damages caused by the Defendant together with costs of this action.

JUDGMENT

GOVINDEN CJ

The pleadings

- [1] The Plaintiff avers that he is a businessman; retailer and wholesaler of goods and products and that the Defendant is a locally registered company which engages in imports; clearing; agency handling and sales and that the Defendant had on numerous occasions handled and cleared goods for and on his behalf, as a client, consignee or importer into the country. In direct reference to the facts of this case the Plaintiff say that he imported 2 pallets of car body repair products for his store named “*Madeleine Store*” situated at La Louise, from the United Kingdom on the 15th of August 2015, via the Ocean Vessel Rio Bravo in container no SEGU15245668. He did this through the London Port of Gateway and the said consignment, which had the description and identification of the said container arrived in Seychelles on the 1st week of February 2016. It is the further averments of the Plaintiff that his shipping agent liaised and transacted directly with the Defendant, in relation to this consignment and that the Defendant had in its possession the Export Invoice and the Declaration of Disposal Order, both as handling agent and clearing agent and as contractor of the Ministry of Tourism and Transport in its Port and Marine Division.
- [2] According to the Plaintiff, it transpired that on the 29th day of January 2016, at approximately 18.15 pm, the National Drugs Enforcement Agency (NDEA) arrested the Plaintiff and took him to the Defendant’s warehouse, to inspect 4 pallets imported in the said container, allegedly containing controlled drugs. Plaintiff was legally treated as a suspect for the importation of the said controlled drugs. The said incident was public and witnessed by numerous members of the public, including the Plaintiff’s family.
- [3] It is averred that out of the four pallets two had the identification and importation numbers designated to the Plaintiff, for his imported goods and two other were marked differently. It is further averred that prior to the said arrest of the Plaintiff by the NDEA, the said drug enforcement agency had contacted the Defendant and the latter failed to inform them as to which ones were and which ones were not the Plaintiff’s pallets.
- [4] According to the Plaintiff, the acts and omissions of the Defendant’s workers and employees, constitutes a faute for which the Defendant is vicariously liable in law.
- [5] The Plaintiff particularised the faute as follows;

Failure to clearly and concisely inform the NDEA of the particulars, number and description of the Plaintiff's 2 pallets; failing to adequately provide the NDEA with accurate information on Plaintiff's imports; failing to inform the NDEA as to who imported the two other pallets which were indeed by a third party known to the Defendant; failing to safeguard the interest of Plaintiff, its client; acting to the detriment of the Plaintiff and causing his arrest and detention.

[6] As a result the Plaintiff claim a sum of SR 1million in moral damage from the Defendant together with cost and interest.

[7] The Defendant contests the Plaintiff's claim. However, it does not contest that 2 pallets were shipped by the Plaintiff into Seychelles in container no SEGU15245568 and admitted that the said pallets had a description and identification number as that of the container and the content were listed as car body repair products and that it was in possession of the Declaration of Disposal Order no 1668. However, it denies that there were any acts or omissions on its part that had led to the decision of the NDEA suspecting and arresting the Plaintiff. The Defendant avers that the NDEA requested it to open the warehouse for inspection but made no mention as to which pallets were required for inspection given that they had their open copy of the manifest and when the warehouse was opened its workers were requested to stand aside and that they are not allowed to interfere with the NDEA's investigation.

[8] The Defendant denies the particulars of fault and avers that it could not have caused the arrest and detention of the Plaintiff as this decision was made entirely and solely by the NDEA, which were at all-time acting under lawful authority, for this reason it prays that the Plaintiff's claim be dismissed with cost. At any rate it avers that even if the Plaintiff's claim was proved, it is grossly exaggerated and therefore only minimal damage should be paid.

The law

[9] The law governing this case can be found in Article 1382 and Article 1384 of the Civil Code of Seychelles, and in so far as relevant, they provide —

Article 1382

“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 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. [...].”

Article 1384

“1. A person is liable for the damage that he has caused by his own act but also for the damage caused by the act of persons for whom he is responsible or by things in his custody.

3. Masters and employers shall be liable on their part for damage caused by their servants and employees acting within the scope of their employment. A deliberate act of a servant or employee contrary to the express instructions of the master or employer and which is not incidental to the service or employment of the servant or employee shall not render the master or employer liable.”

Uncontested and contested facts

[10] It is not disputed that the goods of the Plaintiff was handled by the Defendant after it was imported in the country and that the goods as described by the Plaintiff were in the custody of the latter in its warehouse at the Port when the arrest and detention of the Plaintiff took place. The Defendant does not even dispute that the goods of the Plaintiff as imported might even have contained illicit substances. What the Defendant does not accept is that it played a role or that its actions or that of its agents or employees were material in the NDEA arresting and detaining the Plaintiff. The Defendant claims that it,

in good faith, placed the goods in its warehouse, awaiting the Plaintiff to remove them and any confusion regarding mixing the Plaintiff's good with that of some other importer, which might have contained illicit substances were not of its doing and that at any rate it has no power to question any decision of the NDEA.

Submissions

[11] In her submissions, the Learned counsel for the Defendant submitted that two pallets were imported by the Defendant and that the evidence of two of the Defendant's witnesses shows that there was no failure on the part of the Defendant to identify the said pallets to the NDEA agent. She submitted that witness Ms Lajoie, the Tally Clerk, indicated that the 2 pallets that belonged to the Plaintiff were marked clearly enough for her to place them on her tally sheet. However, while she admitted that the tally sheet, exhibit D2, had an error which could have led to the mixing of the pallets of the Defendant with those of the third party, she stated that she had no doubts that they were properly identified. Further, she stated that when the NDEA agents asked Mr Leon, another of its agent, which pallet belonged to the Plaintiff, he correctly identified the Plaintiff's pallets to them. According to her, any error of discernment on the part of the NDEA agents that led to the confusion between the Plaintiff's pallets and that of a third party cannot be attributed to the Defendant.

[12] As regards any confusion that could have been caused by the content of exhibit D2. Learned counsel submits that there is no proof that has been adduced which show that the tally sheet was ever in the possession of or used by the NDEA. At any rate she submitted that the error appeared to have indicated that the 4 pallets which appeared under the row for the Plaintiff belonged to some other unnamed consignee and not the Plaintiff at the time when the NDEA did their inspection. At any rate, she submitted that in the event that this court finds that the Plaintiff has proved his case, that the damages he is claiming are grossly exaggerated.

[13] Counsel for the Plaintiff, on the other hand, submitted that on a balance of probabilities, the Plaintiff has proven that his cargo and pallets were removed by agents of the Defendant and that they were placed in the warehouse by them. That the tally report

prepared by an agent of the Defendant contained an error, which caused two pallets not imported by the Plaintiff to be tallied as if they were imported by him. That these additional pallets which belonged to another importer which were later found to contain a controlled drug were similarly wrapped in blue plastic sheeting as that of the Plaintiff and had been placed by agents of the Defendant in a line, next to each other. The tally agent then placed her tally sheet for consideration by her supervisor.

[14] It is his submission that the close proximity between the pallets of his client and the other pallets; their physical resemblance, coupled with the mistake on tally sheet caused the NDEA to suspect the Defendant to have imported the controlled drug and to subsequently arrest him after having contacted the Defendant. It is counsel's submission that the Defendant is liable for the mistakes of its employees acting during the course of their employment and that the mistakes were caused by their omissions; imprudence and negligence. As such, it is his submission that the Defendant is liable to pay damages for the depression, humiliation, stress and anxiety that these have caused to the Plaintiff.

Discussions and determination

[15] I have thoroughly considered the evidence and testimonies led before me, with special consideration to the credibility of witnesses as tested by cross examinations and the submissions made on behalf of both parties in this case. Having done this I consider that the areas for determination consist of mostly of issues of facts, which can be summed up as follows; Who had the obligation to identify and handle the imported items of the Plaintiff which consisted of two pallets when it arrived in Seychelles; in what ways was this done and could this have led to the National Drug Enforcement Agency (NDEA) identifying an illicit third party's pallet as belonging to the Plaintiff and hence his arrest.

Who had the obligation to identify and handle the imported items of the Plaintiff which consisted of two pallets when it arrived in Seychelles.

[16] The Defendant was responsible for what is term as the destination handling of the goods imported by the Plaintiff. This comprises of a number of activities performed in the Republic of Seychelles once the consignment arrives, some of those obligations are

carried out by the local handling agents the Land Marine Limited. However, the bulk of the onshore including the physical verification of the goods against the Manifest and the collection of the container at the port and bringing it to the destination warehouse , its unstuffing; the cargo inspection and sorting out for onwards transportation or collection by the consignee is the obligation of the Defendant. These are contractual obligations that binds the Defendant.

[17] The Plaintiff testified under oath. It is his evidence that he is an importer of car products and car general auto parts and his business is called Madeleine Store. The manufacturer and shipper of these products in England is called U-Pol Ltd. The export from the United Kingdom is done by the Cresta Shipping Agency who had send to him a Bill of Lading; his invoice and the packing list which list down the way his consignment has been packed. This manifest was provided to him by the DHL. The Manifest included the packing details, including the fact that his goods was in the palettes. He was informed of the estimated date that the ship was supposed to arrive in Seychelles. Usually, the destination handling in Seychelles was carried out by his Seychelles agent which is the Mahe Shipping and the Defendant who is the person who will receive his goods, store it in its warehouse until it is released into his custody. Mahe Shipping, his local import agent would liaise with the Cresta Agency. The agents of the Defendant would use a tally sheet to ensure that the cargo content tallies with the Manifest when the container is open. If the cargo is ready to be released his agent would be provided with a Declaration order and a disposal order and he would be charged bases on the cubic meters of import. The Defendant has been handling his import since 2009.

[18] In this particular case he paid the U-Pol Ltd on the 28th of November 2015 for a consignment of tiger seal, body filler, Quick fill and tanner. His agent Cresta Shipping send to him a Bill of Lading for these goods addressed on Madeleine Store, Jivan's Complex, Mt Fleuri. The Bill of Lading, prepared by the CRESTA SHIPPING AGENCIES, which was produced in evidence contained, amongst other entries, the following;

Consignor;

U-POL LTD

4TH Floor, The Grange

100 High Street

London

N146BN

Consigned to order;

MADELEINE STORE

JIVAN COMPLES

MONT FLEUX, NAHE

SEYCHELLES TEL 2484344374

Marks and Numbers

Number and Kind of Packages

MADELEINE STORE

2 PALLETS

MADELEINE STORE

STC 266 CARTONS CAR BODY

JIVAN COMPLEX

REPAIR PRODUCTS

MONT FLEUX

HAZ CLASS 3 UN3269 PGIII

MAHE

HAZ CLASS 3 UN1263 PGIII

SEYCHELLES

HAZ CLASS 2.1 UN1950

ALL LIMITED QTY

FREIGHT PREPAID

SHIPPED ON BOARD

“RIO BRAVO”

LONDON GATEWAY PORT

15.12.15

[19] The export invoice of the Plaintiff in respect of this import issued by the U-POL ltd was also produced by the Plaintiff which showed that he purchased several car parts and car products from the former.

[20] Also produced in evidence was the export loading manifest which contain an exact replicate of the Plaintiff’s good as per the above Bill of lading but with amongst other goods the following entry

No and Types of Packs	Gross/cube/LDM	Consignor	Consignee
Goods Desc/Marks and nos			
1 PALLET		STRONG EXPORT	DINESH AUTO PARTS
STC HOLT LLOYD PRODUCTS		BUNKERS	P.O.BOX 165
INCLUDING HAZ CLASS 3		HARVEST HILL RD	MONT RLEURI
		MAIDEN HEAD	MAHE,SEYCHELLES
		BERKSHIRE SL6 2QH	DELIVER TO;
		VAT NO 537873993	MAHE SHIPPING
			SHIPPING

HOUSE

[21] Reading these documents together shows that a consignment similar to that of the plaintiff was put on the same container and ship into Seychelles from the UK. It landed

on the same day and was are housed by agents of the Defendant in the Defendants warehouse. There was nothing illegal or wrong with that, in fact it was a matter of pure coincidence that this occurred. No liability can be attached to this fact. The Defendant did not and could not change this set of event.

Did the Defendant carry out its obligation in such a way that led to the National Drug Enforcement Agency (NDEA) identifying an illicit third party's pallet as belonging to the Plaintiff and hence his arrest.

[22] Some things happened or where done to those pallets, when they landed in Seychelles that started a chain of events that would eventually lead to the arrest of the Plaintiff. Evidence revealed that the consignment of the Plaintiff was placed closed to and alongside another imported by Dinesh Auto Parts. Both consignments were similarly packed and wrapped in cling film. The Dinesh Auto part consignment consisted of 4 pallets not 2 pallets. This is clear evident on Exh D2. All of them were entered on the tally sheet as "cannot specified", making them to visually appear as if they formed one coherent whole. They had no visible markings. Somebody walking in the warehouse could have easily come to the conclusion that both items were imported by one importer that is either the Plaintiff or Dinesh Auto Parts.

[23] The confusion was exacerbated by a mistake committed by the Tally Clerk of the defendant. Ms Lajoie testified under oath that as part of her duties she ensures that items physically removed from containers imported into Seychelles tallies with the content of the manifest of importers. In this case she admitted to have made an error on her tally sheet. She physical verified all the items found in container SEGU1524568. When the items were being physically removed from the container. For some unexplained reason, however, she entered against "Madeleine Store Jivan Complex" against 6 pallets, describing the goods as " cannot specified" instead of 2 pallets Looking at the tally sheet the overall impression that is given to an objective reader is that the 6 pallets could belong to the Plaintiff. And this is exactly what happened.

[24] To my mind, the culmination of these facts and circumstances led to the NDEA misidentifying the pallets containing the controlled drugs to be that of the Plaintiff. The

Plaintiffs pallets were placed side by side in the warehouse by agents of the Defendants next to the pallets containing the controlled drugs. Though this might seem innocuous, the fact that the two pallets were similar physically and the lack of enough marking on them was the precursor of the misidentification. The Plaintiff's pallets were tallied by clerk of the Defendant and they were physically stored by agents of the Defendant in such a way so as to give the impression that all the pallets which were lying side by side in the warehouse consisted of one consignment. The Tally Sheet was then placed on a table by the tally clerk for her supervisor's consideration. The NDEA who had access to the pallets and the Tally Sheet subsequently, in their zeal to arrest a suspect for the unlawful importation of a controlled drug, came to the conclusion on these facts that there were grounds to suspect the Plaintiff of the offence of importation of a controlled drug. It was only after the arrest of the Plaintiff and further inquiries following that that they discovered that the arrest took place on the wrong assumption that the pallets were that of the Plaintiff, after which they released him without charge. By then the damage was done.

[25] Accordingly, I find that the Defendant, through its agents and or *prepose*, had committed an error of conduct which would not have been committed by a prudent person in the special circumstances and that this error amounted to a *faute in law* has to be the subject matter of reparation by way of damages on the part of the Defendant.

Quantum of damages

[26] An assessment under moral damage would be sufficient to determine whether or not the Plaintiff would be compensated, especially as he has not adduced any evidence to show that he has suffered any material loss on account of the Defendant's acts and omissions amounting to a *faute* leading to his claimed unlawful arrest and detention. *See Cable and Wireless Ltd v Michel [1996] SLR 11.*

[27] A person is entitled to moral damages as compensation for moral prejudice. Moral prejudice has been defined in *Quebec (Public Curator) v Syndicat National des employes de l'hopital St-Ferdinand, [1996] Can LII 172 paragraph 63, as*

‘including loss of enjoyment of life, esthetic prejudice, physical and psychological pain and suffering, inconvenience, loss of amenities, and sexual prejudice.’

[29] In *Aglae v Attorney General* [2009] SCSC 278, [15], Egonda-Ntende CJ stated:

There are three approaches to calculating moral damages. These are the conceptual, personal and functional approach. These three approaches have been discussed in Quebec (Public Curator) v Syndicat National des employés de l’hôpital St-Ferdinand, [1996] CanLII 172 paragraphs 72 to 80:

‘(3) Method of Calculating Moral Damages

72. In calculating compensation, moral prejudice may be addressed in three different manners which, as we shall see, are much more often complementary than opposite: see A. I. Ogus, "Damages for Lost Amenities: for a Foot, a Feeling or a Function?" (1972), 35 *Modern L. Rev.* 1; and A. Wéry, "L'évaluation judiciaire des dommages non pécuniaires résultant de blessures corporelles: du pragmatisme de l'arbitraire?", [1986] *R.R.A.* 355. These are the conceptual, personal and functional approaches, which we shall examine briefly in turn.

73. The so-called conceptual approach considers the components of a human being to have purely objective value, which is expressed in a specific monetary amount. The major disadvantage of this extremely simple method is that it fails to take into account the victim's specific situation. It has been criticized as being an "unsubtle" solution: *Andrews v. Grand & Toy Alberta Ltd.*, *supra*, at p. 261.

74. I would note, however, that in practice, French law has applied this method of evaluation for a very long time: see Y. Chartier, *La réparation du préjudice dans la responsabilité civile* (1983), at p. 683; G. Viney, *L'indemnisation des victimes d'accidents de la circulation* (1992), at pp. 120-21; and M. Le Roy, *L'évaluation du préjudice corporel* (12th ed. 1993), at p. 67. In Quebec, moreover, there are abundant examples in the case law where the courts have

implicitly used the conceptual approach to calculate the amount of moral damages: see, *inter alia*, *Dugal v. Procureur général du Québec*, [1979] C.S. 617, *rev'd in part J.E. 82-1169 (C.A.)* (amount reduced owing to a change in circumstances); *Bouliane v. Commission scolaire de Charlesbourg*, [1984] C.S. 323, *aff'd 1987 CanLII 705 (QC C.A.)*, [1987] R.J.Q. 1490 (C.A.) for moral damages; and *Canuel v. Sauvageau*, [1991] R.R.A. 18 (C.A.).

75. Secondly, at the opposite end of the spectrum from the conceptual approach, the personal approach to calculating moral damages makes it possible to determine the compensation that corresponds specifically to the loss suffered by the victim. As Wéry wrote, *supra*, at p. 357, this approach [TRANSLATION] "assigns no objective value to the organs of the human body but rather seeks to evaluate, from a subjective point of view, the pain and inconvenience resulting from the injuries suffered by the victim".

76. The personal approach, which thus declines to standardize the calculation of moral prejudice, is not preferred in Quebec case law when the moral prejudice is serious and calls for payment of the largest possible amount of moral damages. It nonetheless seems to be relevant in the case of an average or low degree of prejudice: see *Gingras v. Robin*, J.E. 84-765 (Sup. Ct.); *Bolduc v. Lessard*, [1989] R.R.A. 350 (Sup. Ct.); and *Drolet v. Parenteau, reflex*, [1991] R.J.Q. 2956 (Sup. Ct.), *aff'd 1994 CanLII 5444 (QC C.A.)*, [1994] R.J.Q. 689 (C.A.). There is then a separate evaluation of the various components of the moral prejudice, which is an indication that the personal approach is being applied.

77. Lastly, the third method of calculating moral damages, adopted as applicable in the factual circumstances of the trilogy *Andrews v. Grand & Toy Alberta Ltd.*, *supra*, *Arnold v. Teno*, *supra*, and *Thornton v. Board of School Trustees of School District No. 57 (Prince George)*, *supra*, and in *Lindal v. Lindal*, *supra*, refers to the functional approach. As Dickson J. explained in *Andrews*, this approach seeks

to calculate the “physical arrangements which can make [the injured person’s] life more endurable . . . accepting that what has been lost is incapable of being replaced in any direct way” (p. 262).

78. It should be noted that the Quebec courts have not generally applied the functional method. In fact, in most cases, the trier of fact will first determine the quantum of moral damages and then justify it on an annual basis, referring at that point to certain replacement values: see, for example, *Cortese v. Sept-Îles Hélicoptères Services Ltée*, [1983] R.L. 46 (Sup. Ct.); *Bouliane v. Commission scolaire de Charlesbourg*, supra; *Perron v. Société des établissements de plein air du Québec*, J.E. 90-721 (Sup. Ct.); and *Marchand v. Champagne*, J.E. 92-429 (Sup. Ct.).

79. This being said, it is apparent from the case law and literature in Quebec that, in terms of calculating compensation for moral prejudice, the three methods of evaluation described supra interact, leaving the courts considerable latitude so that they can reach a reasonable and equitable result. Professor Gardner, supra, stated, correctly in my view, the basic rule that applies in this field (at p. 173):

[TRANSLATION] 239 -- Applicable legal rule. In our view, evaluation of non-pecuniary losses must not be based on the prior and exclusive choice of a method to evaluation, since those methods (conceptual, personal and functional) are not legal rules. The only rule in this respect is the rule that the victim be compensated in a personalized manner for the loss suffered (article 1611 C.C.Q.). [Italics in original; underlining added.]

80. I entirely concur in this view. Thus, in Quebec civil law the three approaches to calculating the amount necessary to compensate for moral prejudice -- that is, the conceptual, personal and functional approaches -- apply jointly, and thereby encourage a personalized evaluation of the moral prejudice. In fact, this appears to me to be the best solution in a field in which exact quantification of the prejudice suffered is extremely difficult because of the qualitative nature of that prejudice.’

- [30] The three approaches should be applied jointly in order to arrive at the compensation the Plaintiff is entitled to and the Defendant liable to pay.
- [31] The Plaintiff claimed SR1 Million for his unlawful arrest and detention, including the moral damage he suffered from the Defendant together with cost and interest which the Court finds to be grossly exaggerated.
- [32] Both claims for compensation which are none pecuniary or none material loss fall under one head of claim, moral prejudice, for which moral damages may be awarded.
- [33] Factually and based on evidence, it was only after the arrest of the Plaintiff and further inquiries thereupon that the NDEA discovered that the arrest took place on the wrong assumption that the other pallets containing the controlled drugs were not that of the Plaintiff, after which they released him without charge. The arrest of the Plaintiff and his subsequent detention was clearly not unlawful as the NDEA was led to believe on reasonable grounds, as a result of the acts and omissions of the Defendant's workers and employees, that the Plaintiff was a suspect for the importation of the said controlled drugs. The NDEA have powers to investigate and ought to conduct such investigations thoroughly and according to the law. However, the NDEA in good faith lawfully carrying out their duties based in a faute of a third party will not absolved the third party of liability. Accordingly, the Defendant is vicariously liable for the damage caused to the Plaintiff by the acts and omissions of the Defendant, on a balance of probabilities.
- [35] The Plaintiff is clearly entitled to compensation and or damages for the error of conduct; confusion, errors in documentation, and wrong information committed by the Defendant through its workers or employees acting to the detriment of the Plaintiff. This error, being the 'faute' committed against the Plaintiff, would not have been committed by a prudent person in the special circumstances causing his arrest and detention.
- [37] It should be duly noted that the damages that may be awarded are compensatory and not punitive. The Plaintiff should suffer no loss but make no profit at the expense of the Defendant.

- [38] The Plaintiff suffered a certain amount of humiliation and inconvenience due to the act of the Defendant. Though no sum of money would restore what he has suffered, it may at least provide him with substitute pleasure. However, in his submission the Plaintiff claims to be severely affected and depressed to date but there is no evidence produced to prove this claim.
- [40] In the case of *Aglae v The Attorney General* (2009) SCSC 94, the Supreme Court awarded only the sum of SR 10,000 as moral damage to the claimant for illegal and unlawful imprisonment which was the faute committed against him.
- [41] In the case of *Barbe v Laurence* (2013) SCSC 408, the Supreme Court awarded inter alia the sum of SR 20,000 as moral damage that is anxiety, stress and depression to the claimant.
- [42] The cost-of-living index and the rate of inflation are the primary factors and matters, which the Court ought to take into account as they exist at the date of judgment.
- [43] The Supreme Court, in *David & Ors v Government of Seychelles* (2007) SCSC 43 held that:

‘As a rule, when there has been a fluctuation in the cost of living, prejudice the plaintiff may suffer, must be evaluated carefully as at the date of judgment. But damages must be assessed in such a manner that the plaintiff suffers no loss and at the same time makes no profit. Moral damage must be assessed by the Judge even though such assessment is bound to be arbitrary. See, Fanchette Vs. Attorney General SLR (1968). Moreover, it is pertinent to observe here that the continuous fall in the value of money leads to a continuing reassessment of the awards set by precedents of our case law. See, Sedgwick vs. Government of Seychelles SLR (1990).’

- [44] It is pertinent to observe here that the continuous fall in the value of money leads to a continuing reassessment of the awards set by precedents of our case law.

Final Determination

[45] Hence, on a consideration of previous awards and the circumstances of the present case, whereby no evidence of actual damages has been introduced, I award a sum of SR 100,000 to the Plaintiff for moral damages in respect to his predicament and costs of this action shall be payable by the Defendant.

Signed, dated and delivered at Ile du Port on 26 day of March 2021

Govinden CJ