

**SUPREME COURT OF SEYCHELLES**

---

In the matter of:	<b><u>Reportable</u></b> [2021] SCSC 83 (CS 112 of 2017)
<b>FATIMA WILLIAM</b> ( <i>rep by Mr. N. Gabriel</i> )	<b>1<sup>st</sup> Plaintiff</b>
<b>KERLA HOAREAU</b> ( <i>rep by Mr. N. Gabriel</i> )	<b>2<sup>nd</sup> Plaintiff</b>
<b>AND</b>	
<b>ALVIN ABEL</b> ( <i>rep by Mrs A. Amesbury</i> )	<b>1<sup>st</sup> Defendant</b>
and	
<b>PILGRIM SECURITY SERVICES</b> ( <i>rep by Mr. P. Pardiwalla assisted by Ms. V. Nicette</i> )	<b>2<sup>nd</sup> Defendant</b>

---

**Neutral Citation:** *William & Anor v Abel & Anor* (CS 112/2017) [2021] SCSC 83 (26 March 2021)

**Before:** Andre J

**Summary:** Claim of damages arising out of injuries sustained in a road accident – Vicarious liability

**Heard:** 21 December (Closure of pleadings)

**Delivered:** 26 March 2021

---

**ORDER**

The Court makes the following orders:

- (i) The plaint is allowed as against the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant, latter in its vicarious liability, jointly and severally.
- (ii) The 1<sup>st</sup> plaintiff is awarded a sum of Seychelles Rupees Two Hundred Thousand (SCR 200,000/-) for corporal damages suffered as a result of the accident and the 2<sup>nd</sup> plaintiff is equally awarded the sum of Seychelles Rupees

Fifty Thousand (SCR50,000/-) under the same count;

- (iii) The 1<sup>st</sup> plaintiff is awarded the sum of Seychelles Rupees Fifty Thousand (SCR50,000/-) as moral damages and no award on that count is granted in favour of the 2<sup>nd</sup> plaintiff;
- (iv) Costs with interest is awarded in favour of the plaintiffs.

---

## JUDGMENT

---

**ANDRE J**

### **Introduction**

- [1] The Judgment arises out of a plaint dated the 6 November 2017 and filed on the 8 November 2017, wherein Fatima William (“1<sup>st</sup> plaintiff”) and Kerla Hoareau (“2<sup>nd</sup> plaintiff”), (cumulatively referred to as the “plaintiffs”), pray for a judgment against Alvin Abel (“1<sup>st</sup> defendant”) and Pilgrim Security Services (2<sup>nd</sup> defendant”) (cumulatively referred to as “the defendants”). The plaintiffs are claiming a sum of Seychelles Rupees Eight Hundred Thousand (SR 800,000) for the total of injuries and moral damages they allegedly sustained arising out of road traffic accident at Le Niole and the vehicle with which they were both hit was driven by the 1<sup>st</sup> defendant and belonging to the 2<sup>nd</sup> defendant.
- [2] The 1<sup>st</sup> defendant is an employee of the 2<sup>nd</sup> defendant Pilgrim Security Services which is a private security firm operating in Seychelles.
- [3] The 1<sup>st</sup> defendant admits driving the vehicle, subject matter of the road accident, and puts the plaintiffs to the strict proof of the other averments of their plaint and further claims that the total amount

claimed is grossly exaggerated and the plaintiffs were put to the strict proof thereof.

- [4] The 2<sup>nd</sup> defendant prays that the plaint is dismissed with costs on the basis of the 1<sup>st</sup> defendant not having caused the accident in the course of his employment and was on a frolic of his own and that the total sum claimed is grossly exaggerated.

### **Factual and procedural background**

- [5] The 1<sup>st</sup> plaintiff is the mother of the 2<sup>nd</sup> plaintiff, a minor. The 1<sup>st</sup> defendant, is an employee of the 2<sup>nd</sup> defendant.

- [6] On the 24<sup>th</sup> day of December 2012, the plaintiffs were injured after they were hit by a vehicle at le Niole, Mahe belonging to the 2<sup>nd</sup> defendant and driven by the 1<sup>st</sup> defendant. The plaintiffs aver that the accident was due to the '*faute*' and negligence of the defendants.

- [7] The 1<sup>st</sup> defendant according to the police report was traveling from town, towards Le Niole and upon arriving near Singaram shopping center, he lost control of his vehicle S14468 belonging to the 2<sup>nd</sup> defendant and collided against an electricity pole on the right-hand side and then hit the 1<sup>st</sup> plaintiff from behind.

- [8] The 1<sup>st</sup> plaintiff further claims that the accident occurred at the time she was standing near the roadside with the 2<sup>nd</sup> plaintiff and they were both waiting for the 1<sup>st</sup> plaintiff's second child Yves Hoareau, who was in the shop at the time.

- [9] The 1<sup>st</sup> plaintiff avers that she tried to get the 2<sup>nd</sup> plaintiff out of the way to prevent her from getting hit, however, the vehicle bounced back and landed onto a terrace overlooking the shop with its right front and rear tires off the road. The 2<sup>nd</sup> plaintiff was hit and the vehicle rolled over her body and she was trapped underneath. The plaintiffs

were then transported to the hospital and the 1<sup>st</sup> plaintiff was admitted for about one month. As for the 2<sup>nd</sup> plaintiff, she sustained lacerations and bruises on her leg and was discharged the same day.

- [10] The injuries of the 1<sup>st</sup> plaintiff were mostly over the head, the right shoulder, and the right lower limb. The 1<sup>st</sup> plaintiff was discharged on the 4<sup>th</sup> day of January 2013 but re-admitted on the 10<sup>th</sup> of January 2013 because of complications and she was discharged on the 3<sup>rd</sup> day of February 2013 and continued local antiseptic dressing in the local clinic and the SOPD Orthopedic clinic. However, she had to undergo surgery again on the 28<sup>th</sup> day of June 2013 with bone drafting. She developed a drop foot after surgery and was later discharged on 13<sup>th</sup> July 2013. According to the doctors, there is a residual deformity where there is a shortening of the right leg compared to the left leg. It was explained in evidence, that the difference in the leg length is a permanent deformity.
- [11] The 1<sup>st</sup> plaintiff is still suffering from the effect of the accident and there is a strong possibility that she will be in permanent disfigurement and partial disability of the lower limb. The plaintiffs have now filed a plaint claiming the sum of Seychelles Rupees Eight Hundred Thousand (SR 800,000) with interest at the current bank rate and with costs.
- [12] The 1<sup>st</sup> defendant does not deny the accident but puts the plaintiffs to the strict proof of the averments as to circumstances and cause of the accident as averred and that the claim is grossly exaggerated and prays that the Court dismisses the plaint with costs.
- [13] Whilst, the 2<sup>nd</sup> defendant admits the accident and the employment relationship of the 1<sup>st</sup> and 2<sup>nd</sup> defendant but denies that the former was at the time of the alleged accident acting in the course of his employment and was on a frolic of his own hence denying liability and

also averring gross exaggeration of the claim and hence prays in the result for the dismissal the Plaintiff with costs.

### **Evidence adduced**

#### **Plaintiffs' case**

[14] At the hearing the 1<sup>st</sup> plaintiff testified that on the 24<sup>th</sup> of December 2012, she had gone to the shop, at Le Niole, accompanied by her daughter the 2<sup>nd</sup> plaintiff who at that time was 8 years of age. Suddenly, a vehicle came to where they were standing on the side of the road and she tried to protect her daughter from being hit, but it was too late.

[15] The 1<sup>st</sup> plaintiff regained consciousness at the hospital, she was informed by doctors that she had a fracture of the right tibia and fibula and she had multiple injuries over the head, the right shoulder, and the right lower limb.

[16] There was further, abrasion over the right frontal region and the shoulder, there was a small laceration over the left knee and her right leg had a deformity. She was treated and discharged on the 4<sup>th</sup> day of January 2013. However, on the 10<sup>th</sup> January 2013 she returned to the hospital as her wound was discharging pus, one screw was exposed and the foot was swollen. She was readmitted with a diagnosis of post-operative wound infection. She was admitted to the operating theatre on the 22<sup>nd</sup> day of January 2013 where the doctors conducted wound debridement and offering.

[17] The 2<sup>nd</sup> plaintiff, Kerla Hoareau, testified that she could not recall much of the accident as she was overrun by the vehicle that hit both her and her mother. She recalled being treated at the hospital where she was complaining of pain in both legs. She had bruises of the anterior of the

mid-tight of the left leg, superficial burn marks were present on the external side of the shaft. She was discharged the next day.

[18] Doctor Gilbert Pierre testified that he was on duty on the 24<sup>th</sup> December 2012, when Kerla Hoareau, was admitted at casualty with a history of a road traffic accident. He confirmed that the patient was complaining of pain in both legs but she was conscious and stable. There were bruises on the right leg on the inner side of the knee of approximately six times five centimeters, there were bruises on the left ankle on the external malleoli with deep whole bruises on the dorsal of the foot and posterior area, superficial laceration under the right foot. She has been prescribed cloxacillin 250 mg every 6 hours for five days. The wounds were cleaned and dressed with alternate-day dressing in a local clinic.

[19] Doctor Jhowla Manoo testified that on the 24<sup>th</sup> December 2012, Fatima William the 1<sup>st</sup> plaintiff was admitted at casualty with a history of a road traffic accident and was seen by one doctor Sinuhe Rodriguez. She had multiple injuries over the head, right shoulder, right lower limb and was complaining of pain and swelling in the right lower limb. There was no history of loss of consciousness, no vomiting, and dizziness. The witness confirmed what the 1<sup>st</sup> plaintiff had testified with regards to the details of the injuries and the post-operative period. On cross-examination, he stated that the patient was discharged after ten days at the request of the 1<sup>st</sup> plaintiff.

[20] He further testified that antibiotics would normally last for six weeks on a patient. When she came back to the hospital on the 10<sup>th</sup> January 2013 after she was discharging pus and the problem with the screw being exposed, she was advised not to do much walking and to rest. The leg was fixed again and she was discharged on the 5<sup>th</sup> February 2013 after the wound had been cleaned, dressed, and treated with

antibiotics. On the 28<sup>th</sup> of June 2013, an x-ray was conducted that showed no callus formation and a diagnosis of non-union was made. The necessitated a new operation with bone grafting as it was not healing. She was advised to use corrective shoes to walk properly.

[21] Cinderella Biscornet a police officer produced the occurrence book of Beau Vallon police station and she read out the report made by the duty officer on the day of the accident of the 24<sup>th</sup> December 2012. The occurrence book was marked as an exhibit.

### **Defendants' case**

[22] The 1<sup>st</sup> defendant testified on his own behalf to the effect that he was the driver of the vehicle, bearing registration number S 14468 during the accident and the owner of the vehicle is the 2<sup>nd</sup> defendant. That on 24<sup>th</sup> December 2012, he was driving from Mont Buxton in the above-mentioned vehicle, to meet up with a colleague at Le Niole.

[23] Upon reaching the road at Le Niole he testified that his vehicle travelled around a bend on the road and continued to slide and eventually hit a person on the road. The vehicle then stopped and the 1<sup>st</sup> defendant tried to exit the vehicle but was unable to as many people had already gathered and were threatening to fight him. A lady stopped the people that were gathering and the 1<sup>st</sup> defendant explained that the accident happened before a bend and he was driving on the left side of the road. The victim of the accident was on the right side of the road, near a shop. The vehicle veered to the right and hit the 1<sup>st</sup> plaintiff, it was then put to him in cross-examination, that there was a second victim to the accident, namely the 2<sup>nd</sup> plaintiff; Kerla Hoareau. The 1<sup>st</sup> defendant testified that he had received consent from Pilgrims Company the 2<sup>nd</sup> defendant to drive the said vehicle on the day in question.

[24] The general manager of the 2<sup>nd</sup> defendant namely; Sandy Roberts testified that he is a colleague of the 1<sup>st</sup> defendant, who is a technical Supervisor of the Company. That the company had a policy for the use of vehicles, especially when there is a technical breakdown and permission is given to employees before operating any vehicle. That he could not recall whether or not permission from headquarters had been given to the 1<sup>st</sup> defendant on the day of the accident.

### **Legal analysis and Discussion of evidence**

[25] Three questions arise for determination in this matter. Firstly, whether the plaintiffs have proved on a balance of probabilities that the 1<sup>st</sup> defendant the then employee of the 2<sup>nd</sup> defendant drove the vehicle in question hastily at the material time causing accident which amounted to a *faute* in law?; Secondly, and if so, whether the 2<sup>nd</sup> defendant is vicariously liable for damages caused to the plaintiffs by the *faute* of the 1<sup>st</sup> defendant?; and thirdly, and if so, what is the quantum of damages the plaintiffs are entitled to receive from the defendants?

**Has the plaintiff proved on a balance of probabilities that the 1<sup>st</sup> defendant, the then employee of the 2<sup>nd</sup> defendant, drove the vehicle in question hastily at the material time causing accident which amounted to a fault in law?**

[26] In Seychelles, a victim of an accident has the choice to proceed under the provisions of articles 1382, 1383 or 1384 and liability without the need to find *faute* (strict liability) is imposed upon a custodian for injuries caused by an object in his custody or under his control. However, while the victim of the damage benefits from a presumption of causality (responsibility) by the custodian, the latter may be exonerated fully or partially if he can show that there existed natural events (e.g. *force majeure*), the intervening act of a third party or the act of the victim himself. (See: ***Laramé v Antoine (1982) SLR***).

[27] In road traffic accidents there is a presumption under article 1383(2) which holds a driver of a motor vehicle liable for damages caused to persons 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.

[28] The question therefore is whether, in this case in light of the evidence, there was an act of negligence on the part of the plaintiffs or an act of God?

[29] Learned Counsel for the Plaintiffs, Mr. Gabriel submitted to the Court that the case of the plaintiffs was grounded on Article 1383(2) of the Civil Code of Seychelles which provides that:

*‘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.*

[30] In the present case, the Court must determine whether the plaintiffs have proven on a balance of probabilities that 1<sup>st</sup> defendant breached a duty of care such that it caused them injuries and, if so, whether they have successfully proved their alleged damages.

[31] Having examined the evidence on record, it is clear that the vehicle driven by the 1<sup>st</sup> defendant did hit the plaintiffs. The 1<sup>st</sup> defendant, according to police report, was travelling from town towards Le Niolle and upon arriving near Singaram shopping centre when he lost control of his vehicle. The said vehicle travelled on the dent of the road and continued to slide from the left side and eventually collided against an electricity pole on the right side and hit the first plaintiff from behind. The 1<sup>st</sup> plaintiff tried to get the 2<sup>nd</sup> plaintiff out of the way to prevent her from getting hit, however, the vehicle bounced back and landed onto a terrace overlooking the shop with its right front and rear tires off the road.

[32] In the light of the above evidence, it is the findings of this Court that the 1<sup>st</sup> defendant does not meet the standard of a normal driver as claimed by the 1<sup>st</sup> plaintiff who testified that 1<sup>st</sup> defendant was driving hastily failing to take heed or sufficiently take heed of the

presence of the plaintiffs on the road. It is noted that there is no evidence of him driving at an excessive speed but he was definitely driving recklessly. Had the 1<sup>st</sup> defendant driven in a prudent and reasonable manner, the vehicle would not have collided against an electrical pole on the right-hand side of the road then proceed to hit the 1<sup>st</sup> plaintiff from behind. To make matters worse, the 1<sup>st</sup> defendant failed to stop after hitting the 1<sup>st</sup> plaintiff because the car bounced back and landed onto a terrace hitting the 2<sup>nd</sup> plaintiff to end up rolling over her body and leaving her trapped underneath by his very lack of duty of care in safeguarding the interests of other road users in this case the 2<sup>nd</sup> plaintiff. The fact that the 1<sup>st</sup> plaintiff had suffered from injuries leading to her being discharged one month later after the accident is further corroboration of this fact.

[33] The 2<sup>nd</sup> defendant claimed that the 1<sup>st</sup> plaintiff had her back to incoming traffic. It was not possible for her to be standing on the right side of the road and get hit from the back by the car that drifted from the left side to the right side of the road at the same time have her back to incoming traffic on the right side of the road. Notwithstanding that argument even if the claim was to be correct, it is considered immaterial noting the specific circumstances of this case.

[34] It is abundantly clear, that the 1<sup>st</sup> defendant who was the driver of the vehicle has failed to rebut the presumption against him. Both the 1<sup>st</sup> and 2<sup>nd</sup> plaintiff were standing on the side of the road and there was no act of God proven exculpating the 1<sup>st</sup> defendant and this was not challenged by the defence either. It follows thus, that I find that the accident occurred through the sole negligence of the 1<sup>st</sup> defendant.

**Is the 2<sup>nd</sup> defendant vicariously liable for damages caused to the plaintiffs by the *faute* of the 1<sup>st</sup> defendant?**

[35] Counsel for plaintiffs submitted that the 2<sup>nd</sup> defendant remained vicariously liable in its capacity as the employer of the 1<sup>st</sup> defendant as the 1<sup>st</sup> defendant had at the time of the accident been acting in the general scope of his employment.

[36] In that light, article 1384(3) of the Civil Code provides that:

*‘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.’*

(Emphasis is mine)

[37] Our Civil Code is derived from the French Civil Code and our jurisdiction have developed our own jurisprudence but refer to authorities or doctrinal writings from other civilist traditions such as Mauritius or France on a particular issues such as the current one arising in this case.

[38] To the above effect, French jurisprudence has established three cumulative conditions necessary to establish liability of employers for damages caused by their employees acting within the scope of their employment:

*“Pour être certain que la faute du préposé ne puisse pas être rattachée à l’exercice de ses fonctions, l’Assemblée plénière de la Cour de cassation a créé en 1988, après quelques errements jurisprudentiels, la notion d’abus de fonctions: ‘le commettant ne s’exonère de sa responsabilité que si son préposé a agi hors des fonctions auxquelles il était employé, sans autorisation, et à des fins étrangères à ses attributions’<sup>1</sup>.*

*L’abus de fonctions est donc caractérisé si trois critères sont réunis:*

- *Le préposé a agi hors des fonctions auxquelles il était employé: le préposé ne doit pas avoir trouvé dans ses fonctions les moyens de commettre sa faute (outils de travail, lieu de travail, clientèle du commettant, etc.);*
- *Le préposé a agi sans autorisation: le commettant n’a pas autorisé le préposé à commettre l’acte considéré comme fautif ;*

---

<sup>1</sup> Cass. ass. plén., 19 mai 1988, n° 87-82.654.

- ***Le préposé a agi à des fins étrangères à ses attributions: le préposé doit avoir agi dans un intérêt personnel et non dans l'optique de mener à bien sa mission.***<sup>2</sup>

These three conditions are cumulative: if one of them is not met, then there is no “*abus de fonctions*” and the employer will be held vicariously liable.

[39] In this case, the 2<sup>nd</sup> defendant adduced evidence that the 1<sup>st</sup> defendant was permitted the use of the vehicle for emergency assistance in connection with his employment after working hours but that the company policy prohibits the use of the vehicle for personal purposes or after working hours unless authorised by a duty officer. There is no evidence that on the date of the accident the 1<sup>st</sup> defendant was contacted to attend an issue within the scope of his employment. However, in his evidence, the 1<sup>st</sup> defendant testified that on the day of the accident, he was on his way to meet a colleague and no attempt was made to show that he was contacted to attend a breakdown.

[40] The determination of whether an act falls within or outside the scope of employment is a question of fact and often one of degree. It is clear that the 1<sup>st</sup> defendant was on a frolic of his own when driving the vehicle that evening. This however, is not sufficient to show that the driver was indeed operating outside the scope of his employment rendering the employer not liable for his employee’s act.

[41] The General Manager of the 2<sup>nd</sup> defendant, Sandy Robert, who testified on behalf of the 2<sup>nd</sup> defendant deponed that as a colleague of the 1<sup>st</sup> defendant, he could not recall whether or not authorisation from headquarters was given to Alvin Abel to drive the said vehicle on the day and time in question.

[42] In that regards, “[P]ermission cannot be left to speculation or conjecture nor be assumed, but must be affirmatively proved, and the fact of permission is just as important to sustain the imposition of liability as is the fact of ownership.”<sup>3</sup>

[43] In the case of ***Sullivan v/s Magnan and UCPS SCSC 491 2016***, the notion of vicarious liability was well explained by the Supreme Court as follows:

---

<sup>2</sup> <https://www.clementfrancois.fr/fiche-responsabilite-commettant-prepose/>

<sup>3</sup> (Scheff v. Roberts(1950) 35 Cal.2d 10, 12 [215 P.2d 925], internal citations omitted.)

*'The 2nd Defendant was the employer of the 1st Defendant at the time of the accident. Article 1384(3) provides:*

*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.*

*The 2nd Defendant has attempted to rebut its vicarious liability as the employer of the 1st Defendant by stating through its Plant Hire Manager that the 1st Defendant was "generally" not authorized to drive on the Cascade Road. I am unable to accept this evidence as it not given by someone who had direct responsibility for the 1st Defendant. The Plant Hire Manager did not state what his authority was in relation to the 1st Defendant and whether he gave specific instructions to the 1<sup>st</sup> Defendant not to proceed on the Cascade Road. I find in any case that his evidence is hard to fathom given the fact that the Cascade Road is a primary road, no different to the Pointe Larue road, a mere three miles further south on which the 1<sup>st</sup> Defendant would have had to drive to access the 1st Defendant's quarry operations.*

*Under the provisions of Article 1384(3), I find the 2nd Defendant vicariously responsible for the contributory negligence of the 1st Defendant as assessed.'*

[44] The 2<sup>nd</sup> defendant, by their own witness evidence, namely, Sandy Roberts, has not been able to rebut its vicarious liability as the employer of the 1<sup>st</sup> defendant.

[45] Despite claiming that the 1<sup>st</sup> defendant had acted contrary to the 2<sup>nd</sup> defendant's instructions as stipulated in his employment contract by driving the vehicle at the relevant time, the 2<sup>nd</sup> defendant should have exercised careful management when giving permission to use the company vehicle. If the owner consented to possession, the owner

will be vicariously liable even if there is a breach of a condition imposed by the owner relating to the use or operation of the vehicle and even to the latter regards no evidence was adduced to prove the terms and conditions of the permission to the required standard of proof.

[46] It follows thus, based on the above analysis, that under the provisions of Article 1384 (3) the 2<sup>nd</sup> defendant is vicariously responsible for the negligence of the 1<sup>st</sup> defendant.

[47] To be further explained in the latter regards with regards to vicarious liability of the 2<sup>nd</sup> defendant, that when it is necessary for an employee to operate a vehicle, employers should enforce their vehicle policies in a consistent manner for all employees. A failure to do so puts the company's finances at risk. Vicarious liability places a heavy burden upon employers to ensure their employees obey traffic laws.

[48] The social policy that has led to the doctrine that an employer is liable for the delicts of his or her employees revolves around a number of policy considerations. The doctrine is usually justified on one of the basis that by instructing employees to engage in activities, the employer creates the risk that the employees may cause harm to others and the employer also has the capacity to control his or her workers' activities.<sup>4</sup>

[49] In *NSSA v Dobropoulos & Sons (Pvt) Ltd 2002 (2) ZLR 617 (S)*, the Supreme Court held, that the rationale behind holding employers vicariously liable for the acts of their employees, even where they have deviated from the strict course of their duty, is that it is right and proper, where one of two innocent parties has suffered a loss arising from the misconduct of a third party, that the loss should fall on the one of the two who could most easily have prevented the happening or the recurrence of the mischief. This approach does not depend upon a "creation of risk" theory, but uses the customary test for determining the existence of vicarious liability which serves the interests of society by maintaining a balance between imputing liability without fault, which runs counter to general legal principle, and the need to make amends to an injured person who might otherwise not be recompensed.<sup>5</sup>

---

<sup>4</sup> <http://zimlil.org/content/chapter-13-vicarious-liability>

<sup>5</sup> *Ibid.*

## **Quantum of damages the plaintiffs are entitled to receive from the defendants**

[50] The plaintiffs are claiming the following as a result of the accident:

- (a) SR 700,000 for injuries set out in the medical reports; and
- (b) SR 100,000 for moral damages including inconvenience, mental trauma, pain, anxiety, distress, lack of amenities.

[51] The medical practitioners called by the plaintiffs (*supra*), have testified that the 1<sup>st</sup> Plaintiff suffered a fracture of the right tibia and fibula and she had multiple injuries over the head, the right shoulder and the right lower limb. There was an abrasion over the right frontal region and the shoulder, there was a small laceration over the left knee and her right leg had a deformity.

[52] The 2<sup>nd</sup> plaintiff suffered injuries on the right leg on the inner side of the knee, of approximately 6x5 centimeters, there were bruises on the left ankle on the external malleoli with deep whole bruises on the dorsal of the foot and posterior area, superficial laceration under the right foot. She was prescribed colxacillin.

[53] Noting our local jurisprudence in regards to same and similar injuries our courts have opined as follows.

[54] In the case of ***Sinon v Kilindo (unreported) CS 225 of 1992***, the Plaintiff suffered a compound commuted fracture of the right tibia and fibula. The plaintiff was only 20 years old and had engaged in sports activities before the disability. On a consideration of the injuries, pain and suffering, loss of amenities of life and the age of the plaintiff, he was awarded a total sum of SCR 69,197.20.

[55] In the case of ***Bouchereau v Panagary (1997) SCSC 15***, the Plaintiff was awarded SCR 74,000 for pain and suffering where his injuries consisted of a fracture to his facial bone, multiple fractures to his ribs, lacerations to his body in general and fractures of his right tibia and fibula bones.

[56] In the case of ***Barbe v Laurence (2017) SCSC 408***, the Plaintiff was awarded SCR 200,000 for bruises, a lost tooth and fractured femur whereby the Plaintiff had to undergo

surgery to rectify the injury. For moral damages that is his anxiety, stress and depression as claimed, he was awarded a further SR20, 000.

[57] In the case of ***Labrosse v Boniface (2018) SCSC 194***, the claimant was awarded SCR 200,000 for the fracture to her tibia and SCR 100,000 for moral damages.

[58] Further, in the calculation of the quantum of damages, the Court should take into consideration 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

[59] 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).*

[60] 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.

[61] The Plaintiffs are claiming a sum of Seychelles Rupees Eighty Thousand (SR 800,000/-) for the total of injuries and moral damages they sustained which the Court finds to be grossly exaggerated based on the medical evidence adduced.

[62] It should be duly noted in damages claimed and eventually awarded are compensatory and not punitive hence reminder that the plaintiff should suffer no loss but should not be allowed to coin profit at the expense of the defendant.

[63] Further, this Court notes the corporal damages or injury which entails bodily injury caused to the victims.



- [64] From his evidence, Doctor Johwa Manoo concluded that the 1<sup>st</sup> Plaintiff contributed to her own pain and suffering. He testified that he prefers keeping a patient in hospital for at least 14 days, but the 1<sup>st</sup> plaintiff discharged herself on 4 January 2013 despite having developed an infection as she wanted to see her children. The 1<sup>st</sup> plaintiff was then re-admitted with a diagnosis of post-operative wound infection and discharged on 3 February 2013 when the wound had improved. There was a further surgery undertaken thereafter to rectify the issue of the fracture not healing hence the patient developed a drop foot. Doctor Manoo went further to testify that the fracture had healed upon subsequent review and that the shortening of the right leg was to be remedied by the use of corrective shoes. The 1<sup>st</sup> plaintiff testified that she had refused to wear corrective shoes due to discomfort in her toe. Had she followed the medical directives as to wearing the prescribed corrective shoes, she would have lessened the pain and damages suffered to a large extent.
- [65] The 2<sup>nd</sup> defendant called Doctor Gilbert Pierre on his part produced Exhibit P1, a medical report dated 12 March 2013. His evidence was to the effect that he did recall that the patient he examined had bruises and lacerations.
- [66] In the end result, in terms of corporal damages it is the findings of this Court that the 1<sup>st</sup> plaintiff should be awarded Seychelles Rupees Two Hundred Thousand (SCR 200,000/-) for abrasions, a small laceration and a fracture in her right leg. The 2<sup>nd</sup> Plaintiff suffered some superficial burn marks, bruises and superficial laceration. There is no evidence of subsequent medical follow-ups or that any would be required. The 2<sup>nd</sup> plaintiff on that count thus is awarded the sum of Seychelles Rupees Fifty Thousand (SCR 50,000/-).
- [67] The plaintiffs have also claimed moral damages which essentially reflect the moral and/or psychological suffering, pain, and trauma suffered by the victims as a result of the delict.
- [68] In terms of moral damages, the 1<sup>st</sup> plaintiff's pain and suffering, anxiety and loss of amenity could have been limited to a great extent if she had followed to medical directives. The 2<sup>nd</sup> plaintiff did not adduce any evidence to prove moral damages as claimed.

[69] I thus, hereby award a sum of Seychelles Rupees Thirty Thousand (SCR 30,000/-) in favour of the 1<sup>st</sup> plaintiff and no award is made in favour of the 2<sup>nd</sup> plaintiff for reasons given.

### **Conclusion and final determination**

[70] Noting the analysis of the legal position above, the Court orders as follows:

- (i) The claim is allowed as against the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant, latter in its vicarious liability, jointly and severally.
- (ii) The 1<sup>st</sup> plaintiff is awarded a sum of Seychelles Rupees Two Hundred Thousand (SCR 200,000/-) for corporal damages suffered as a result of the accident and the 2<sup>nd</sup> plaintiff is equally awarded the sum of Seychelles Rupees Fifty Thousand (SCR50,000/-) under the same count;
- (iii) The 1<sup>st</sup> plaintiff is awarded the sum of Seychelles Rupees Fifty Thousand (SCR50,000/-) as moral damages and no award on that count is granted in favour of the 2<sup>nd</sup> plaintiff;
- (iv) Costs with interest is awarded in favour of the plaintiffs.

Signed, dated and delivered at Ile du Port on 26<sup>th</sup> March 2021.

---

**ANDRE J**