

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC
CS 70/2020

In the matter between:

F[...] Azemia
*(herein representing a minor
[...] as the Guardian ad Litem
of Machabée, Mahé Seychelles)
(rep. by Frank Elizabeth)*

Plaintiff

and

ATTORNEY GENERAL
(rep. by Nissa Thompson)

Defendant

Neutral Citation: *Azemia v Attorney General* (CS 70/2020) [2022] SCSC (25th March 2022)

Before: Burhan J

Summary: Minor suffered electrocution on school premises during school hours. School responsible for persons and things in their care. Victim did not have capacity of discernment. Claim succeeds.

Heard: 15 July 2021, 6 October 2021 and 11 November 2021

Delivered: 25th March 2022

JUDGMENT

BURHAN J

[1] This suit is brought by the father (the “Plaintiff”) [...] Azemia at the instance of his thirteen-year-old son, [...] (the “Victim”), also referred to as [...] who was at all material times a student at B[...] (the “school”) which is in turn under the authority of the Ministry of Education and employees of the Defendant as per the submissions of the Defendant dated 6th October 2021.

[2] The Plaintiff by amended plaint dated 4th November 2020 is seeking damages on behalf of his son in a total sum of SCR 575,000.00 for injuries sustained by his son due to an electric shock which occurred as a result of touching an exposed live electric wire whilst attending the B[...] School.

[3] A breakdown of the damages claimed are given below:

(a) Damages for burn to left and rights hands;	SCR50,000.00
(b) Damages for disfigurement of the fourth (small) finger on the left hand;	SCR50,000.00
(c) Damages for electric shock;	SCR 25,000.00
(d) Damages for pain and suffering	SCR 100,000.00
(e) Damages to fourth (small) finger of the left hand and chronic scarring with tendon rupture.	SCR 100,000.00
(f) Moral damage for mental anguish and inconvenience	SCR 50,000.00
(g) Disfigurement and scarring	SCR 100,000.00
(h) Cost of medical report	SCR 350.00
TOTAL	SCR 575,350.00

[4] The undisputed facts in this matter are that at all material times the Victim was a minor of 13 years and a student of the B[...] School; that on 27 October 2017, the Victim suffered electrocution when he came into contact with a live electricity wire whilst on the premises of B[...] School.

- [5] The issues to be determined in this case are whether the Defendant's employees are liable for the injury sustained by the Victim and whether there was contributory negligence on the part of the Victim or whether the Victim may have been the only one responsible for the incident.

The Law

- [6] The relevant provisions of the Civil Code are as follows:

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.

Article 1383.1

Every person is liable for the damage it has caused not merely by his act, but also by his negligence or imprudence."

Analysis

- [7] When one analyses the evidence in the case, the Victim in his evidence states that on the 27th of October 2017, he was at the school and when he was going up from the lobby, he had met two of his friends and had entered into a conversation with them. While talking to them, he had sat on a railing and was going to hold on to a metal pole when he had been hit by a current from an electric wire that had come down close to the pole. On seeing that he had been electrocuted, one student, J[...], had run to inform the master who was downstairs. When the master came he was still holding the electric wire. Thereafter the electricity had been switched off and he had been taken to hospital. It is clear from the evidence of Dr. Patrick Commettant that the Victim had suffered burn injuries on his left small finger and had chronic scarring at the end of his 5th finger and was having a problem with his small tendon and was therefore referred for special intervention to an Orthopaedic Surgeon. These injuries were consistent with being exposed to an electric current.

- [8] It is clear from his evidence before Court that the Victim, a minor and a student of B[...] School was in the care of the School when the incident happened during school hours. It is the view of this Court that the said school through its Head Teacher and teachers must exercise due diligence and care for the safety of the students in their care while the students are on school premises and during school hours. Whether the students are in class or not, as long as they are on school premises, they are in the care of the school and the school administration and teachers must exercise a duty of care as well as having authority over all the students.
- [9] The school is also responsible for the things in their care and on their premises (*'responsabilité du fait des choses'*). The electrical wire was on the school premises, this fact is not in dispute— whether exposed or not and therefore it remains part of the school structure and a thing in the school's care. In this instant case the school should have taken due diligence and care to ensure that such live wires were safely insulated and not exposed in any way or manner for a child to reach or touch. Therefore, it is the view of this Court that when a damage or injury is caused by a thing belonging to the school or part of the school structure, the school would in principle be liable, in accordance with article 1384(1).
- [10] This provision has been tested and confirmed several times by the courts and notably in *Joubert v Suleman* (2010) SLR 248 and *Johansson v Renaud* (1993-1994) SCAR 291 which confirmed the presumption of liability of the custodian or guardian of a thing which causes damage. The case of *Coopoosamy v Delhomme* (1964) SLR 82 held that the owner of an inanimate object retains the custody of that object as long as they have the 'usage', 'control' and 'direction' of it. A similar position has been established in French jurisprudence, notably **l'arrêt Franck du 2 décembre 1941**, (Cour de Cassation, Chambres réunies, du 2 décembre 1941) which elaborated on these three elements that constitute determination of the guardian of the thing as follows: 'usage' (or 'use') in the sense of having control of the thing in one's own interest, 'direction' (or 'management') being the power to decide on the purpose of use or to give orders in relation to it, and 'control' being the ability to prevent or predict (forewarn) abnormal operation of the thing.

- [11] As per *Joubert v Suleman* (supra), the presumption can be rebutted only if the custodian can prove that the damage was solely due to (a) the act of the victim; (b) the act of a third party; or (c) an act of God (force majeure). Case law has established that for liability under art 1384 of the Civil Code to arise, the damages caused by a thing of which a person has custody must be caused by the thing per se independently of the direct human intervention (*Elisa v Wheeler* (1965) SLR 177, *Chang Him v Carpin* (1968) SLR 90, *Hoareau v United Concrete Products* (1979) SLR 155, *Pool v Inpesca Fishing* (1988) SLR 115, *Emily v Chevannes Merceron Ballery SA* (1988) SLR 172).
- [12] The guardian of the thing may also be able to avoid liability if able to prove that all precautions were taken to foresee the occurrence of an event and adopt measures to prevent the consequences. Therefore, there can be no fault where there is diligence in dealing with predictable or unpredictable events (*Emmanuel v Joubert* (1996-1997) SCAR 235, and *Attorney-General v Labonte* (2006-2007) SCAR 213).
- [13] The Defence case rests on the argument that the Victim was not where he was supposed to be, i.e., in math class, at the time of the incident; that the wire was not exposed and/or posed a threat and danger to the life, safety and security of the victim; and that the victim sustained those injuries solely due to his own fault by grabbing the wire to show his friends. On this basis the Defendant denies liability, vicarious or otherwise.
- [14] The question of whether the victim was responsible for the injury he sustained necessitates the consideration of two things: (i) the circumstances surrounding the incident, and (ii) who the Victim was, and specifically, his capacity of discernment.
- [15] With regard to the first issue, the circumstances surrounding the incident have already been detailed above. It is admitted that the incident occurred on the school premises while the child, as a student, was in the care of the school. As stated above the school is responsible for the things in its care and thus liable for any damage caused by them. It is a fact that the Victim grabbed the wire. What is contested by the defense is whether the Victim grabbed the wire by accident, and they allege that this was not the case but rather he grabbed the wire intentionally to show his friends. However the defense has brought no evidence to support this allegation. This is mere speculation by a witness who was not

an eye witness at the time of the incident nor present but had turned up after the fact (Miss[...]). There is nothing in the evidence of eye witnesses called to suggest that the Victim intentionally grabbed the electrical wire. The defence also tries to allege that the wire was not exposed within reach of the students and that the Victim must have climbed up to grab it. This is also not substantiated in any way by way of evidence and a very improbable scenario. There was nothing in the evidence to suggest or indicate that the Victim had something to climb on, or climbed on top of something in order to deliberately catch the hanging wire. It is the view of this Court that wires with live current, live wires, should not be kept, especially in schools, dangling low from ceilings but should be insulated and tucked away safe from the reach and even view of children. Further, the mere fact that the teacher who gave evidence describes the child (the Victim) as a child who “*when you are trying to go right, he runs left*” does not amount to a defense. It is all the more reason why live wires with electricity should not be kept dangling from ceilings in schools as all students are not perfect students and all schools do have mischievous and very mischievous children.

[16] On the second issue, regarding the capacity of the minor to discern the danger of the situation, the age of the victim is important. At the relevant time, the Victim was 13 years old. The question that follows is whether a minor can be found to be contributory negligent. Article 1382 (3) (a) provides that person is responsible for fault, original or contributory, only to the extent of that person’s capacity of discernment. If we are to refer again to French jurisprudence, as in matters of personal liability, the French courts have for a long time refused to allow the guardians of persons deprived of discernment (mentally disabled or insane persons and young children) to be held liable on the basis of article 1384(1). A minor cannot be expected to be in a position to assess the danger of the situation as the Victim’s evidence was that he went to hold onto a pole and had no expectation of there being a live wire. In the circumstances, even a person capable of discernment would not be in a position to assess the potential risk of a situation or course of action unless they aware of the material facts.

[17] In the case of *Esther & Ors v Public Utilities Corporation & Anor* (CS 33/2015) [2019] SCSC 950 (07 November 2019), which involved a claim made by the family of the victim of an electrocution resulting in death, the Court assessed liability as follows -

[62] In explaining the relationship between these meagre articles of the Civil Code which set out the French law of delict, Professor Edward Tomlinson explains:

“Article 1382 proclaimed the fault principle: one must make reparation for injuries caused by one's fault. Article 1383 then defined fault to include negligence. The remaining three articles imposed liability based on the defendant's relationship to some other person or thing. Article 1384 defined those situations where one person is liable for injuries caused by another (e.g., by one's child, employer or pupil), and articles 1385 and 1386 imposed liability for injuries caused by one's animals and by the collapse of one's buildings. The original texts thus adopted a dual approach: liability was either fault-based or based on the defendant's relationship with the injury-causing person or thing” (Edward A. Tomlinson, Tort Liability in France for the Act of Things: A Study of Judicial Law-making, 48 La. L. Rev. (1988).

(...)

[64] In a series of cases in France, the courts held the custodian or guardian of *things* responsible for damage they caused under Article 1384-1. In the first instance, when a tugboat's boiler exploded and killed an employee (Cour de cassation chambre civile 16 juin 1896, *arrêt Teffaine*), secondly when an uncovered shipment of resin caught fire and destroyed adjoining property (127. Cass. civ., 16 Nov. 1920, 1920 D. Jur. I 169 (note Savatier), 1922 S. Jur. I 97 (note Hugueney) and thirdly, when a truck driven by a department store's deliveryman ran over a young girl (*Jand'heur v. Les Galeries Belfortaises*, Judgment of 13 fevr. 1930, Cass. ch. reun.D.1930.1.57 note Ripert, S.1930.1.121 note Esmein) the owners and custodians of these *things* were held responsible.

[65] In the Seychellois case of *The Attorney General rep. Government of Seychelles v Jumaye (1978-1982) SCAR 348*, Lalouette JA stated that in France, liability under Article 1384 was not based on *faute* (fault) but on “objective liability independent of *faute*”. Hence, in such cases, the victim of the damage had only to allege and establish the causal role of the *chose* (thing) by which the damage has occurred. Otherwise, he benefits from a presumption of causality (responsibility) by the custodian. The custodian of the thing may be exonerated fully or partially only if he can show that there existed natural events (e.g. vis major), the intervening act of a third party or the act of the victim himself leading to the accident.

[66] In applying these principles to Seychellois law, the first sentence of Article 1384 constitutes the legal basis of a general and autonomous strict

liability for all things. In such cases, the claimant must only prove that the *thing* caused him damage or an injury under Article 1384. Under that provision, the person who is the custodian of the *thing* is liable unless he can prove liability by an act exterior to the thing in his custody. “Custody” is defined by case law as “powers of use, control and management of the thing” (*Connot c Franck* Ch reun 2 Dec 1941, S 1941 I 217).

[18] It can be concluded from the above considerations that the guardian of the thing, in this instant case the school is therefore liable for the damage caused by the wire belonging to it and being in its custody and on its premises. The Victim as set out above is a minor who in any event is not capable of discernment and thus the issue of contributory negligence does not stand. There is also, arguably, a greater duty of care on the school given that they are responsible for the care and safety of the students in the schools, who are all minors, while the students are on school premises. Being aware that they are dealing with children, greater diligence and care should have been taken to ensure that no electrical wires are exposed or accessible to any of the students. It could be reasonably foreseeable that children may not be able to assess the danger of coming into contact with a live wire and knowledge that they should avoid it at all cost. For all the aforementioned reasons this Court is satisfied the plaintiff has established on a balance of probability that the school would in principle be liable for the damage and injury caused to the Victim in this case, in accordance with article 1384(1) of the Civil Code.

[19] The next issue to deal with is the quantum of damages to be awarded. The quantum of damages is normally assessed on the basis of the damage, that is to say, the extent of the injury sustain, any residual or permanent disability and financial loss incurred. In this case, it is a bit difficult to assess the full extent of the injury or trauma sustained by the Victim. The medical evidence in this case is very scant. The nature of the injury, being electrocution, consists of an electrical current passing through the body. The medical examination done on the Victim at the clinic consisted of an assessment of his eternal injuries, being burns on his fingers. The evidence shows that from the electrocution, smoke was coming from him, which suggests that it was not a minor zap of electricity. Rather, the electricity went through his body and exited, perhaps further aggravated by the fact that he was holding on to a metal railing at the time, metal being a good conductor of electricity. It is also apparent that the electrocution was more than a mere

zap and only stopped when a student ran and informed a master who turned the main switch current off.

- [20] The injury also resulted in the Victim urinating in his pants while the electricity wracked through his body. Although this is not quantifiable injury as such, in terms of the moral effect on the victim, this might also play a role. The Victim was a 13 year old student attending the school, who would continue to attend the school for many years, being witnessed by his peers and teachers peeing in his clothes. The negative mental effect on a child is, in my opinion, not negligible.
- [21] Most of the case law available involving electrocution as an injury resulted in death of the victim. In *Esther & Ors v PUC & Anor* (supra), the court awarded a total of SCR 1,400,000, distributed among the various plaintiffs in that case in accordance with their claims. In that case, however, the electrocution had resulted in death. The guardian of the thing (PUC being the guardian of the electrical line on which the victim had accidentally stepped) was held responsible for the damage and had been negligent in leaving the wire exposed. In that case, the amount awarded in moral damages to each successful plaintiff ranged from SCR100,000 to SCR200,000.
- [22] This court is satisfied that the Victim is entitled to compensation for the injury caused to him. The Victim cannot be held liable as he had no capacity of discernment, nor was any allegation of his fault in the incident in any way substantiated. There is therefore no contributory negligence. The claim should therefore succeed.
- [23] While damages should not be punitive, the refusal of the school in this case to concede to any extent of liability or to even admit responsibility for the care of the minor or the thing in its custody, is alarming given that they are responsible on a daily basis year in and year out for hundreds of children and have a duty to provide a safe environment for them.

[24] I believe in the circumstances of this case that a sum of SCR 250,000 (Two hundred and fifty thousand) would be a just and appropriate award as damages and proceed to award same with legal interest and costs.

Signed, dated and delivered at Ile du Port on 25th March 2022.

M Burhan J