

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC
CS 83/2022

In the matter between:

JOLIFF GABRIEL
Of
Carana, Mahe, Seychelles
(Represented by Mr France Bonte)

Plaintiff

And

KENNY VIDOT
Of
Au Cap, Mahe, Seychelles
(Absent/Unrepresented)

Defendant

Neutral Citation:	<i>Gabriel vs Vidot</i> (CS 83/2022) [2023] SCSC	(27 th January 2023)
Before:	Adeline J	
Summary:	Plaint claiming loss and damages in delict arising from road traffic accident.	
Heard:	25 November 2022	
Delivered:	27 January 2023	

JUDGMENT

Adeline, J

BACKGROUND/INTRODUCTION

- [1] This is a civil suit commenced by way of a plaint dated 25th July 2022, pursuant to Article 22 read with Article 23 of the Seychelles Code of Civil Procedure (“the SCCP”), filed in court inter parte on the 3rd August 2022 by one Joliff Gabriel of Carana, Mahe, Seychelles (“the Plaintiff”). The Plaintiff has filed this plaint against one Kenny Vidot of

Au Cap, Mahe, Seychelles (“the Defendant”) claiming loss and damages in the total sum of SCR 730,000, with interest thereon and cost of this suit, and or for any order of this court for the benefit of the Plaintiff which the court considers just and necessary in the circumstances of the case.

- [2] On the date appointed for the plaint to be mentioned for the first time before this court on the 28th September 2022, the Respondent who had been served with summons to appear before this court to answer the plaint in accordance with Article 30 read with Article 34 of the SCCP, failed to put appearance in court in person, or otherwise. Upon a motion made viva voce by learned counsel for the Plaintiff pursuant to Article 65 of the SCCP, the Plaintiff was granted leave for the plaint to be heard ex parte.

THE PLEADINGS

- [3] In the plaint, the Plaintiff pleads, inter alia, the following;

“2. On the 20th December 2021, the Plaintiff was crossing the road to go to a shop and was hit by a vehicle S34262 being driven by one Kenny Vidot of Au Cap and suffered injuries caused by the Defendant.

3. As I was crossing the road, I looked right, then I looked left then I looked right again and I did not see any vehicle so I started to cross, when I got to the half way line in the middle of the road I saw the vehicle being driven by the Defendant coming at a very great speed from the direction of Anse Aux Pins and I saw he was coming too fast, and I started to run and then I jumped through the air to avoid him hitting me but he was too fast and his front of the vehicle clipped my legs in the air and threw me a great distance on the road.

4. I fell on the road and was unable to stand up. Whilst on the road I saw the Defendant walk towards me his first words was “are you okay, ou pann ganny dimal, sorry mon ti pe degaze pou al aranz mon transport”.

5. The police came on site and made arrangements for an ambulance to come and pick me up. The collision had broken my left ankle and broken 4th and 5th left toes.

6. The Plaintiff avers that;

(i) the Defendant was speeding exceeding the speed limit and being reckless.

(ii) due to the Defendant excessive speed, he could not stop his car and injured the Plaintiff.

(iii) as a result of the collision the injuries sustained by the Plaintiff who is a Labourer (rock driller) caused him great economic loss as well as mental and physical damage and injuries.”

[4] In his pleadings, the Plaintiff particularised the Defendant’s “faute” as the following;

“7. (i) driving with excessive speed above the speed limit.

(ii) being unable to stop to prevent the collision

8. The faute of the Defendant caused damages and injuries to the Plaintiff as set out infra at paragraph 8.

9. As a result of the damages and injuries suffered pay to the Plaintiff the sum as specified in paragraph 10.”

[5] In his plaint, the Plaintiff particularised the loss and damages as follows;

“10(i) Damage to the left foot (to this day remains inflamed and I have a limp)

- Fractures on the left foot of proximal phalanx of 4th and 5th toes.

- Broken left ankle SCR 400,000.

(ii) loss of ability to work for two months SCR 30,000.

(iii) moral damages SCR 300,000.”

[6] In essence, on the face of the pleadings, the plaint discloses a cause of action in delict based on “fault”.

THE EVIDENCE

- [7] At the hearing of the evidence, ex parte, the Plaintiff who testified on his own behalf, was the sole witness to testify in this case. His testimony was that he is a rock driller who on the 20th December 2021, was working. He stated, that it was around 9 – 9.15 am that, he left the site where he was working to go to the shop to buy something. To get to the shop, he had to cross the road. According to him, before he crossed the road, he looked 3 – 4 times left and right, and saw no on coming vehicles from either side of the road.
- [8] It was the testimony of the Plaintiff, that he had already crossed the road halfway through when he saw an on coming vehicle driven at a very fast speed by one Kenny Vidot approaching him. As per his testimony, to avoid being hit by the said vehicle, he jumped on the other side of the road but unfortunately, the vehicle still hit him on his foot and consequently, he fell to the ground and was left lying on the road.
- [9] The Plaintiff testified, that following this accident, in the queue amongst the on coming vehicles coming towards the scene of the accident, there was a police car that stopped at the scene of the road traffic accident. The police from the police car told him to stay where he was whilst he waited for the ambulance to arrive. The Plaintiff also testified that, he was taken to hospital by ambulance where he was medically examined. According to the Plaintiff's testimony, he later received a medical report dated 26th December 2021, exhibit P3, followed by another report dated 29th December 2021, exhibit P4.
- [10] The Plaintiff further testified, that upon receipt of the report dated 29th December 2021, exhibit P4, he did write a letter to the Defendant dated 15th February 2022, exhibit P3. In the said letter, the Plaintiff claims the total sum of SCR 250,000 of which, SCR 30,000 for loss of ability to work for two months, SCR 75,000 for damage to his left foot, and SCR 150,000 for moral damage. As per the Plaintiff's testimony, he now claims damages in the total sum of SCR 730,000 plus interest and cost.
- [11] It was the testimony of the Plaintiff that, he did instruct his lawyer to write to the Commissioner of Police which he said, his lawyer did, exhibit P1, to request for a report

into the progress of the investigation of the accident. It was also the testimony of the Plaintiff that, he did receive a letter in reply dated 28th December 2021, exhibit P2, written on behalf of the Commissioner of Police by Police Officer WPC Marinette Kariuki, by which letter, he was informed that the investigation is ongoing.

THE LAW

[12] On the face of the pleadings, clearly, this is a claim founded on the law of delict which generally means, that the burden of proof is on the Plaintiff to prove three elements, namely, fault, damage and the causal link between the two on the balance of the probabilities in order to render the Defendant liable. The case of *Constance v Grandcourt* (unreported) [2016] SCSC 868 is the case law authority supporting the proposition that, a victim of road traffic accident may proceed with a claim under Articles 1382, 1383 or 1384 of the Civil Code of Seychelles Act (“the Act”).

[13] In fact, Article 1383 (2) of the Act has long been regarded as a strict liability regime (law of strict liability). That being the case means, that the victim of the damage has to only allege and establish the causal role of the chose which in the instant case is vehicle S34626 driven by the driver. For the ease of reference, Article 1383(2) of the Code is couched in the following terms;

“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 vehicles. Vehicle defects, or the breaking or failure of its parts, shall not be considered as act of God”.

[14] In *Sullivan v Magnan* [2016] SCSC 491 Twomey CJ (as she then was), had this to say about the strict liability regime under Article 1383(2);

“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 (eg force major), the intervening act of a third party or the act of the victim himself”.

- [15] In the instant case, the plaint was heard ex parte, and the Plaintiff’s evidence was uncontroverted. Nonetheless, by virtue of Section 1315 of the Act, “he who avers must prove”. That is to say, to prove the Defendant’s liability, the Plaintiff had to prove, on the balance of probabilities, that the accident alleged to have occurred, did in fact, occurred. Had there been an inter parte hearing, the normal approach would have been to balance the Plaintiff’s claim to that of the Defendant based on the evidence laid before the court, and decide which of the two versions are more likely to be true, and if the plaint was being defended, by virtue of Article 1383 (2) the burden would have shifted onto the Defendant to show that he was not delictually responsible for the injury caused to the Plaintiff. In otherwords, that the accident causing the injury to the Plaintiff happened through an event outside his control.
- [16] Therefore, this plaint having been heard ex parte, means, that the Defendant has mounted no defence to successfully discharge its burden of proof in order to escape the strict liability regime imposed by Article 1383(2) of the Act. As a consequence thereof, on account of the Plaintiff’s uncontroverted evidence, this court is satisfied, that there is evidence to the effect that, a road traffic accident occurred on the 20th December 2022 as a result of the Defendant’s fault which caused damage to the Plaintiff and which therefore renders the Defendant liable towards the Plaintiff for the damage.
- [17] It now remains for a determination on quantum. It is to be noted, that learned counsel for the Plaintiff made no submissions and relied entirely on the evidence laid before this court by the Plaintiff. In *Sullivan v Magnan and Anor* (unreported) [2016] SCSC 491, Twomey, CJ (as she then was) expressed concerns about the lack of submissions by counsel on comparators for the assessment of quantum. This is also a concern in the instant case.

- [18] The case of *Barbe vs Laurence* (unreported) CS NO 188 of 2013, instructs us that, there are three types of damages arising from delictual harm as a result of one's "faute". They are corporal damage, material damage and moral damage. By corporal damage, Twomey, CJ explained in *Barbe* (Supra) that this encompasses, bodily injuries sustained by the victim as a result of the "faute". Such damage is intended to compensate the victim as a consequence of the harm or injuries sustained that, makes him or her unable to fully enjoy life as he did prior to sustaining the injuries. That includes, for example, pain and suffering.
- [19] When one talks or considers material damage, that covers and includes, the destruction cause as a consequence of the "faute" in delict as well as its impact on the victim. For example, where the victim is unable to work to earn a living. As regards to moral damage, that encompasses moral and psychological suffering as well as pain, trauma and anguish which the victim has suffered as a result of the harm or injuries.
- [20] Under Article 1149.2 of the Act, damages are also recoverable for any injury to or loss of rights of personality. These include, inter alia, rights which cannot be measured in money such as, for example, pain and suffering, aesthetic loss and the loss of any amenities of life.
- [21] In the case of *Sinon vs Sinon*, [1977] SLR 209, the court stated that, in tort or delict, as the instant case, damages are compensatory not punitive, and that include moral damages.
- [22] In the case of *Seychelles Breweries Ltd v Bernard Sabadin*, SCA 21 of 2004, the court said that to determine quantum of damages, the court must consider the evidence and the awards given in comparable cases.
- [23] In the case of *Antonio Ruiz vs Jean Borreman*, SCA 22 of 1994, the court said that, when assessing damages to injuries sustained, the main factors the court ought to consider is the nature of the injuries and the age of the injured person.

- [24] In the case of United Concrete Product vs M Albert, SCA 19 of 1994, the court said that in calculating damages, the court can take into account inflation.
- [25] Within the background of these well established principles emerged and backedup by the case law authorities cited in the preceding paragraphs, in determining quantum in this case, I have had due regard to the types of damage in the light of the Plaintiff's claims. As regards to corporal damage, the Plaintiff claims SCR 400,000 for the "fracture on his left foot of proximal phalanx of 4th and 5th toes". As regards to material damage, the Plaintiff claims SCR 30,000 for "loss of ability to work for two months", and moral damage in the total sum of SCR 300,000.
- [26] The mere fact that, a claim has been made and particularised in the plaint, does not follow that it ought to succeed. The Plaintiff who asserts his claim has to tender evidence to prove the claim. In his attempts to prove his claim for corporate damage in the sum of SCR 400,000 for injuries he sustained as a result of the accident, the Plaintiff tendered in evidence a medical report, exhibit P4. Ideally, a Plaintiff seeking to rely on a medical report to prove such a claim, would have called the expert which in the instant case would have been the author of the report, Dr Somasundaram Rajasundaram, the Orthopaedic Trauma Surgeon, or any other experts authorised to testify on his behalf. It is not the duty of the court to elicit evidence from the report to assist the Plaintiff to prove his claim. The court is not even competent for that given that the report reveals facts of a different area of expertise.
- [27] The Plaintiff's claim for material damage in the sum of SCR 30,000 for loss of ability to work for two months, is equally not proved by a single shred of evidence, and it is not at all clear how he has reached that figure. At the very least, one would have expected him to produce a medical certificate confirming that he was unfit to work and some other forms of evidence like proof of his loss of earnings. In the hearing of the evidence, he was not even examined about this claim, nor did he make any mention of this claim and try to support it with some evidence.

- [28] As regards to the claim for moral damage, the Plaintiff claims the sum of SCR 300,000. Yet he adduced no evidence at all to prove his claim. One would have expected him to give oral evidence of his moral and psychological suffering, distress and anxiety as well as pain and trauma, and anguish which he has suffered as a result of the harm or injuries sustained.
- [29] In the final analysis, the plaintiff partly succeeds in that, the Plaintiff is awarded the sum of SCR 35,000 for the injuries he sustained as a result of a road traffic accident that occurred on the 20th December 2021. The claim in the sum of SCR 30,000 for loss of ability to work for two months fails, as does the claim in the sum of SCR 300,000 for moral damage because the Plaintiff proved neither of those two claims.
- [30] In the circumstances, this court enters judgment in favour of the Plaintiff against the Defendant in the total sum of SCR 35,000 plus interest as of the date of filing of the plaint, and cost of this suit.

Signed, dated and delivered at Ile du Port 27 January 2023.

B Adeline, J