

IN THE SUPREME COURT OF SEYCHELLES

Reportable

CS 140/2022

In the matter between

MARSHALL BILL
(rep by Guy Ferley)

Plaintiff

and

PUBLIC UTILITIES CORPORATION
(rep. by Michelle Margueritte)

Defendant

Neutral Citation: *Marshall Bill v Public Utilities Corporation (CS 140/2022)*

Before: Vidot J

Summary: Dilictual action; faute, the plaintiff being electrocuted after touching a live wire attached to an electricity pole

Heard: 20th November 2023

Delivered: 27 June 2024

JUDGMENT

VIDOTJ

Background

[I] This case concerns an alleged '*faute*', whereby the Plaintiff was electrocuted after he had accidentally touched an electrical wire attached to an electricity pole. The pole was in a public space and access to it 110t restricted in any way whatsoever. The Plaintiff claims that on 2 JSl August 2019 he was working; installing a fence at Providence and there was an electricity pole in the vicinity. A wire was attached from the top the pole and anchored

to the ground. This was to secure the pole to the ground. Whilst working, he touched that wire that was live and that gave him an electrical shock.

[2] The Plaintiff avers that the electrical shock was so severe that he wet himself. As a result of that shock he had to be transported to hospital. He was diagnosed with polyneuropathy, secondary to electrocution. As a result thereof he suffered damage in that;

- i. he still continues to suffer from spasm of his finger, thus making it difficult to hold things;
- ii. his right arm remains stiffunless placed in an armband;
- iii. he suffers from palpitation and pain in his heart;
- iv. he suffers from pain in both legs and his right leg remains numb;
- v. he has blurry vision in both eyes, and
- vi. he has difficulty sleeping.

[3] The Plaintiff explains that as a result of this he is unable to work and as a result thereof he has suffered loss and damages. He claims that this was as a result of a "faute" of the Defendant. He states that the Defendant failed to ensure that the wire had no electricity passing through it.

[4] The Plaintiff claims damage in the sum ofSR751,000.00 as follows;

- | | | |
|------|------------------------------------------------|--------------|
| (i) | Loss of income since August 2019 | SR726,600.00 |
| (ii) | Moral damage for anxiety, pain and humiliation | SR 25,000.00 |

[5] The Defendant denies the plaint and filed and defence in which it raises points of law apart from responding to the merits.

[6] As pleas in limine litis it claims that;

- (a) the claim is prescribed in terms with section 18(1) of the Public Utilities Corporation Act ("the PUCA") which states that no action shall be brought against the PUC for recovery of damage or compensation of any act or omission of the corporation after 9 months after the cause of action has occurred; and
- (b) the Plaintiff failed to issue a notice in writing to the Defendant of the intended proceedings against the Defendant as contemplated under section 18(2) of the PUCA and that such failure is a bar to the plaint.

[7] On the merits the Defendant avers that it is not the sole owner of electricity poles but agreed that it puts up electricity poles around the country. It states that the injury was caused through the Plaintiffs own negligence in failing to exercise proper precaution and care at work. Further it adds that following investigation it carried out, no faults nor was the wire live. There was no electricity running through the wire. It denies liability for the injuries the plaintiff suffered and states that any injuries that the Plaintiff would have sustained was out of his contributory negligence. The Defendant moves the Court to dismiss the Plaintiff.

The Evidence

- [8] Mr Bill testified that in September 2019, his services were retained by a company called Harini to remove and replace a piece of wire fence which was rusty on its property. He is self-employed and does maintenance work. The wire was near an electricity pole which was erected next to the fence. Whilst going around the fence he grabbed the metal wire that is used to secure electricity poles to the ground and was electrocuted. As a result of that shock he wet his pants. He carried on with his job but thereafter he was not feeling well so he sought medical attention. He produced a medical report from Euromedical Family Clinic that diagnosed him suffering from polyneuropathy secondary to electrocution. But first he went to the hospital where he was kept under observation for a few hours before being discharged.
- [9] The Plaintiff states that he went to see doctors at both public health centres and a private clinic. He went for physiotherapy. He complains that presently he suffers from

insomnia

(for which he takes medication), pain every now and again, weakness in the anTIS and occasional numbness in the legs. He further adds that he cannot work anymore.

[10] The Plaintiff testified that after the incident he made a complaint to the Police. PUC officers came to assess whether the wire on that pole was live and the examination proved positive, something that is denied by the Defendant. He states that after the incident happened he went to PUC and met with one Mr. Alvin and he was promised that PUC would compensate him. They asked for documents but as it was during lockdown he was unable to produce them in time.

[II] Mr. Bill refutes suggestion by the Defendant that he was contributorily negligent while he was working in that he did not wear safety gears and thereby contributing towards the accident.

[12] The only person to testify on behalf of the Defendant was Mr. Daniel Hassan who works as Transmission and Distribution Officer with PUC. However, he was aware of the complaint made by Mr. Bill and that a supervisor went to the location to verify whether the wire was live. He states that the supervisor did a test and there was no electricity running through the wire. However, that supervisor who carried out the test was not called to confirm that evidence before Court.

The Pleas in Limine

[13] The first plea in limine concerns prescription. The Defendant argues that in view of section 18(1) of the Public Utilities Corporation Act, the Plaintiff is prescribed from instituting proceedings against the corporation. Section 18 provides;

"(1) No action shall be brought against the Corporation to recover damages or compensation in respect of any act or omission of the Corporation after the expiry of 9 months after the cause (if action accrued.

(2) No proceedings shall be commenced against the Corporation unless notice in writing of the intended proceedings has been delivered at the office of the Corporation by the party intending to commence those proceedings or by the

attorney or agent not less than one month before the commencement of those proceedings. "

- [14] The above stated argument is no longer the legal position. Article 2271 (1) of the Civil Code Act of 2020 (hereafter "the Code") provides that "*All rights of action shall be subject to prescription after a period of five years except as provided in article 2262.*" Article 2262 deals with real actions in respect of rights of ownership of land or interest in land which therefore is of no relevance here. That means that the article applies to this case. Article 2272 of the Code also states that Articles 2271 to 2280 apply to and bind private parties and the Republic in the like manner. That means that the article applies to PUC equally. Therefore, it is clear that section 18(1) of the PUC Act is now redundant.
- [15] Section 18(2) of the PUCA requires that before proceedings are commenced against PUC that the claimant gives notice in writing of such intent. That means that PUC should be served with a *mis-en-demeure*. The Plaintiff produced a letter of notice which has been admitted as exhibit P2. The letter of notice was issued on 14th April 2021 and the Plaintiff was filed in on 07 December 2022. This satisfies section 18(2) of the PUCA. The Defendant was given ample notice.
- [16] The pleas in limine are devoid of any merit and therefore they do not succeed.

On the Merits

- [17] The Plaintiff claims that the plaintiff is being prosecuted in '*faute*' under Article 1382 of the Civil Code of Seychelles. Article 1382 reads thus;

"(1) Every human act that causes harm (dommage) to another requires the person by whose fault the harm occurred to repair it.

(2) (a) fault is an error or conduct that would not have been committed by a prudent person in circumstances

(b) fault may be the result of an act or omission.

(c) fault may also consist of an act or 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.

(3)

(4)

Also of relevance is Article 1384(1) of the Civil Code which states;

"A person is liable for harm caused not only by his or her own act but also for the harm caused by the act of persons for whom he or she is responsible or by things in his or her care.

[18] Therefore, the Plaintiff needs to establish on the balance of probabilities that the damage he allegedly suffered was occasioned by an act or omission of the Defendant. The Defendant has denied that the wire that supports the stability of the electricity pole was live and that a supervisor was sent to test whether there was electricity running through it. However, as stated that supervisor was not called to give evidence. In such circumstances, I find Mr. Bill's testimony more credible. Mr. Bill did not only make a complaint to PUC but made a complaint equally to the police. Mr. Bill insists that when PUC came to do the test, it was discovered that the wire was live. Mr. Hassan who was not involved in the test being carried out, states that he received information that this was not so. In such a case, it was imperative that the person who carried out the test to have been called. Mr. Bill explained that he had to go to the clinic where he was kept under observation. That is not traversed by the defence. It is inconceivable that doctors would have kept Mr. Bill under observation had he not sustained injuries following the electrical shock.

[I 9] Therefore, I find that that electrical wire was live and as a result of the Plaintiff holding that wire he was electrocuted.

Contributory Evidence

[20] The Defendant alleges that the Plaintiff contributed towards his injury in that he

was working too close to the wire and that he failed to wear gloves and shoes. This is denied

by the Plaintiff. The Defendant did not adduce any evidence to support its allegations. The fact that the Plaintiff was working close to the wire is irrelevant. That electricity pole was in a public place. If that wire was live then it should have been contained in a manner that the public would not have had access to it. The Plaintiff testified that such poles with a supporting wire attached thereto are found everywhere and that there is one next to his home and the wire is not live. Since that pole was in a public place, the Plaintiff could not have been expected to wear gloves nor boots in case he handled that wire. In any case, he states that he was wearing these gears when he was working.

Assessment of Damage

- [21] In the case of delict damages are compensatory and not punitive. Damages should be assessed in a manner that the Plaintiff suffers no loss, but at the same time makes no profit; see *Jacques v Property Management Corporation* [2011] SLR7. In *Ruiz v Borrernans* SCA22/1994 LC 67, it was held that the main factors when assessing damages for injury are the nature of injury and the age of injury. In this case, despite the Plaintiff explaining that he suffers from spasms of his fingers making it difficult in holding items, stiffness in the arm, pain in his legs and right leg remains numb, difficulty and/or inability to sleep and other pain in other parts of the body, he made no claims for these conditions that he claimed was a result of the electrical shock he suffered. I feel that Counsel for the Plaintiff did not give proper attention to these injuries and failed to make a claim for them.
- [22] The Plaintiff makes a claim of moral damage for anxiety, pain and humiliation. There was no evidence to support a claim for humiliation. However, there is evidence that supports his claim for pain. As for moral damage he exclaimed that the injuries sustained has caused him an inability to work and as a result he is frustrated. Since he was active prior to the incident and now being unable to work occasioned him moral damage. It was held in *Babane v Government of Seychelles* (2011) SLR 271 that in making awards for moral damages, courts should take into account socio-economic realities of the time, including inflation and devaluation of the currency and reflect the true cost of living.

However, courts should bear in mind that moral damages are compensatory and not punitive

[23] The Plaintiff makes a claim of loss of income since August 2019, from the date of the incident, to date amounting to a sum of SR726,000.00. He testified that he was self employed dealing in maintenance and that now he cannot carry out his trade. This is because he has lost flexibility and strength in his arms. He alleges that he was making SR22, 000/- per month. However, he did not produce any documents to support that. He referred to one person for whom he claimed he worked for but that person has since passed away. He could have produced some contracts or his tax returns filed with the Seychelles Revenue Commission in support of his claim. It is abundantly clear that the evidence did not support the quantum of damages that was claimed.

[24] Furthermore, I assess that due his age, his strength would have naturally diminished and he would not have been able to continue carrying out heavy work and especially not for long. That means that he could not have been able to carry out masonry works for long, though the case would be different as far as plumbing work is concerned. I also take note that the Plaintiff claims that as result he is receiving assistance of SR5,750.00 from the Agency for Social Protection. He produced a letter in support (exhibit P3) that confirms that he is receiving SR5,750.00 as assistance.

[25] As I stated, the difficulty in assessing his earnings arises because no documents in support of his claim was produced as evidence, though I find that he suffered some loss.

Determination

[26] In the absence of supporting documentary evidence, I assess the earnings of the Plaintiff to have been around SR 12, 000/- per month. He is already earning SR5,750/- per month. In the circumstances he is only entitled to the difference to the assessment made. The Plaintiff is claiming for 33 months loss of earnings. SR 12,000.00 less SR5,750.00 is SR6,250.00. therefore [will award the Plaintiff the sum of SR206,250.00 under the claim loss of income.

[27] As for moral damage, the Plaintiff has not shown any evidence of humiliation nor anxiety. However, he did establish his claim for pain. In the circumstances I award him the sum of SR15,000.00.

Conclusion

[28] I therefore order a judgment in favour of the Defendant against the Plaintiff in the sum of SR221,250.00 with interest and cost.

Signed, dated and delivered at Ile du Port on 27 June 2024.



M Vidot J