

**Philoe v Allied Builders Seychelles
(1999) SLR 72**

Charles LUCAS for the plaintiff
Kieran SHAH for the defendant

Judgment delivered on 8 October 1999 by:

JUDDOO J: The plaintiff has filed a claim against the defendant company claiming damages for injuries suffered by him in the course of his employment. The defendant admitted liability and the determination before this Court is to ascertain the quantum of damages.

The incident occurred on 15 April 1996 whilst the plaintiff was unloading glass panels from a container. The glass panels broke and injured him. According to the medical report issued by Dr Ken Barrad (Exhibit P2) the plaintiff was admitted at the emergency unit on 15 April 1996. He was cut on his left face and neck and left lower leg. Because of the profuse hemorage he was rushed to the operation theatre where the haemorrhage was stopped. Major lesions to the 'left masseter, left sternocleidomastoid and left trapezius muscles' were sutured. In his left leg all the 'extensor tendons' to his toes were cut twice and they were repaired. Multiple lesser lesions to his knees and right shoulder were also sutured. His left ankle and toes were kept in plaster for 6 weeks in total.

The plaintiff claims damages for:

"Hypertrophic, Cosmetic and asthetic disfiguration	R45, 000
Pain and suffering	R50, 000
Loss of earnings, future loss of earning capacity	R75, 000
Loss of amenities	R15, 000
Medical and transport expenses	R5, 000

The plaintiff was examined by Dr Barrad on 29 May 1996 (exhibit P2) and it was observed that "all his wounds are well healed although his major neck wound is hypertrophic and some of the chin wounds have scarred badly because of vein loss. He had a droop at the corner of his left lower mouth due to injury to the mandibular branch of the facial nerve. I expect this to be permanent It seems his tendon repair is working. However, he will probably not regain full power of dorsiflexion of the foot."

The plaintiff testified that as a result of his injuries he was admitted to hospital for 19 days and had followed further treatment for three months. The injuries have left scar marks on his left chin down to the rear of his neck, on his left shoulder, his knee and tibia and his toes. He feels that the nerves on the left side of his mouth are dead and he

has a disorder disability in eating and drinking. Additionally, he has difficulty to stand on his feet for long and cannot put strain on his right arm.

A further medical report produced as Exhibit P2(a) confirms that the plaintiff had attended to medical examination on 10 December 1996. The left side of his face was swollen and he was investigated for a possible blood disease. It was found to be a high red blood cell count. The report added that -

the facial scar has thickened and there is numbness around the neck arising from the cutaneous nerve damage which should be less troublesome with time. No joints have been damaged and no long term arthritis should result. The plaintiff's left leg has recovered very well with minor loss of dorsiflexion power. Plastic surgery can be considered for the facial scars but a cosmetic blemish will remain. The mouth drop and drinking difficulty are from his injury and may not recover. There is loss of symmetry but in fact the plaintiff's shoulder move fully and her good power although slightly reduced.

The final analysis of the medical examination estimated the permanent disability to be at 15%.

I agree with Perera J, in *Confiance v. Allied Builders* (unreported) CS 226/1997 that "save in cases where there are exceptional reasons to deviate the Court must maintain consistency in making awards." In that case which concerned another worker in the same incident the plaintiff was hospitalised for 2 weeks and his leg remained in plaster for 1½ months. His permanent disability was estimated at 10% and the Court, after a review of similar cases awarded R15,000 for pain, suffering anxiety, distress and discomfort and R25,000 for permanent disability infirmity and loss of amenities of life. Taking into account the medical evidence on record in the instant case including the "troublesome scar on the neck", the partial facial nerve palsy, facial scar and mouth drop and drinking difficulty and the overall resulting disability at 15%, I award the following damages:

-	Pain and suffering	R15,000
-	Loss and amenities (including hypertrophic, cosmetic and asthetic disfiguration)	R35,000

As regards loss of future earnings, the defendant has admitted under cross-examination that he had remained in employment with the same employer, although as a handyman. He earns R1600 to R1800 per month and with extras and the figure would reach R2300. In *State Assurance Corporation v Gustave Fontaine* (unreported) Civil Appeal 41/1997 the Court of Appeal found that in assessing loss of future earnings the Court has to take into account the main source of income from one's chosen profession or occupation. Income from other sources should be considered as purely ancillary as a person may

terminate that source of income at anytime for reasons unconnected with the injuries suffered. In *Confiance v Allied Builders* (supra) the trial Court took account that the residual incapacity for income from all sources would necessarily be affected to some limited degree and awarded a sum of R10,000 under that limb. The circumstances of the present case are similar and I award a sum of R10,000 for loss of future earnings. No evidence has been led as to whether the plaintiff did not obtain any salary during the time he was admitted to hospital and following treatment. Accordingly no award can be made on loss of earnings.

Finally under the head 'Medical and Transport Expenses' I take into consideration the receipt produced by the plaintiff (Exhibit PI) for the sum of R1000. The plaintiff testified that he had to attend hospital regularly for his treatment. He had to use a taxi because of the injuries to his leg. However, he does not stay far from the hospital and was charged R40 to R50 for every trip. Accordingly I award the plaintiff a sum of R1500 under this head.

The plaintiff admits that he had been paid R30,000 from the defendant company as moral damages pertaining to this incident. The present award by this Court is one which includes moral damages. Accordingly the plaintiff cannot be compensated twice by the defendant company for the same loss. The total award sum of R61,500 should be deducted in the amount of R30,000 already paid to the plaintiff.

In the end result, I enter judgement for the plaintiff in the sum of R31,500 with interest and costs.

I certify as to counsel.

Record: Civil Side No 272 of 1998