

IN THE SUPREME COURT OF SEYCHELLES

1. Emmanuel Pierre
2. Marie-Annette Pierre
3. Aubrey Pierre
4. Calvin Pierre Plaintiffs

Vs

1. Rodney Jeanne
2. Mervyn Dufrenne
3. Danny Marie  
All of Central Police Station, Victoria.
4. The Attorney General representing  
the Government of Seychelles Defendants

Civil Side No: 46 of 2002

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Mr. B. Georges for the Plaintiffs

Ms. F. Laporte for the Defendants

D. KARUNAKARAN, J.

JUDGMENT

The first plaintiff is the husband of the second plaintiff. The third and the fourth plaintiffs are the children of the first and the second plaintiffs. All plaintiffs live together in their home, situated close to the main road at Plaisance, Mahé. It is not in dispute that the first, the second and the third defendants are members of the Police Task Force and employees of the fourth defendant namely, the Government of Seychelles.

It is averred in the plaint that on 3<sup>rd</sup> of September 2001, when the plaintiffs were in the front yard of their home, passengers from a pick-up that was passing by, threw bottles at them. The first plaintiff in response threw a bottle at the said pick-up, hitting its side. The first, the second and the third defendants and a fourth officer of the said Police Task Force, whose name is unknown to the plaintiffs, then disembarked from their vehicle and entered the yard of the plaintiffs' home. With no warning and for no reason the first, the second and the third defendants along with the fourth officer, then proceeded to assault the plaintiffs and threatened other persons in the vicinity. The first plaintiff was whipped with a wire hose and kicked by all four officers of the said Task Force. The first plaintiff was arrested and brought to Mont Fleuri Police Station. The second plaintiff was hit and kicked by the first defendant, while she had fallen to the ground. The third plaintiff was hit in the back and on his hand with a hose by the fourth officer, who was in the company of the first, the second and the third defendants. The third defendant sprayed tear gas into the face of the third plaintiff using a canister. The fourth plaintiff was kicked and had the gas sprayed into his face by one of the four officers, whom he was unable to identify.

It is also averred in the plaint that as a result of the said assaults on their respective persons, the first, the second, the third and the fourth plaintiffs suffered injury, pain, suffering, humiliation and distress, which they estimate in the sums of Rs50,000/-, Rs50, 000/-, Rs25, 000/- and Rs25, 000/- respectively. It is also the case of the plaintiffs that at the time of the said assaults, the first, the second, the third defendants as well as the fourth officer with them, were employees of the fourth defendant and were acting in the course of their employment with the fourth defendant. Hence, it is averred that the fourth defendant is vicariously liable for the actions of its employees. In the circumstances,

the plaintiffs claim from the defendants jointly and severally Rs 150,000/- in all, as damages for the injuries they suffered.

On the other side, the defendants in their statement defence have averred that the plaintiffs were throwing stones and bottles at vehicles that were passing by on the public road at the material time. In order to prevent the commission of offences and abate public nuisance, the defendants in due execution of their duties, attempted to effect the arrest of the first plaintiff, who struggled and resisted arrest. Eventually, the defendants arrested and brought him to Mont Fleuri Police Station. According to the defendants, they never assaulted or caused any injury to the plaintiffs nor sprayed any tear-gas into the face of any of the plaintiffs. In the circumstances, the defendants dispute the rest of the averments made by the plaintiffs in the plaint and deny liability.

The first plaintiff, aged 47, testified that at the material time, he was assaulted and manhandled by the police officers for no reason. He was repeatedly hit in his face, kicked on his abdomen and whipped on his back with some sort of metal wire. Even after taking him to the police station, again they beat him up causing severe pain and injuries all over his body. He also produced a medical report dated 3<sup>rd</sup> September 2001 – Exhibit P1 - wherein Dr. Patrick Commettant, who was on duty at the Accidents Emergency Unit of Victoria Hospital, has certified that he treated the first plaintiff at around 7 p. m on the alleged date for the following injuries:

- (i) Multiple abrasive marks on the back area.
- (ii) Laceration superficial on the left upper arm
- (iii) Aberrations left maxilla area.
- (v) Red eye – Conjunctivitis
- (vi) Laceration on upper lip

As a result of those injuries, he could not go to work for one week. Besides, the first plaintiff produced two of his photographs - exhibits P2 and P3 - showing injuries on his face and two parallel marks of linear aberrations on his back resembling scars caused by whipping.

The second plaintiff, who is none-else than the wife of the first plaintiff, aged 44, testified that during the said incident she was also beaten up, dragged on the ground and kicked by the police officers, which resulted in injuries on her shoulder, head and breast. She also produced a medical report - exhibitP4 - as well as photographs - exhibits P5, P6 and P7 in support of her testimony. She too, claimed that she suffered severe pain, humiliation and distress following the assaults by the officers.

The third plaintiff, a young man, 26 years of age testified that he was also assaulted by the police officers at the material time resulting bodily injuries of multiple abrasions on his back, consequently, pain, suffering and humiliation. He further stated that the police officers sprayed tear gas into his face on purpose using a canister. As a result, he is still suffering from sinus problem. He also produced a medical report - exhibitP8 - as well as a photograph - exhibits P9, in support of his testimony as to the alleged injuries.

The fourth plaintiff, aged 18 testified that he was also assaulted by the police officers during the alleged incident, for no reason. He stated that he was hit on his back, arms and legs. As he was only 16 then and attending school, the police highhanded assault affected his studies. He too produced a medical certificate - exhibit P11 - in support of his testimony as to injuries he sustained. In view of all the above, all four plaintiffs, the members of the same family jointly claim compensation

from the defendants as hereinbefore quantified. In fact, the defendants did not adduce any evidence in rebuttal.

First of all, on the question of liability, in the absence any evidence to the contrary, I find that the first, the second and the third defendants have acted unlawfully in the unfortunate episode causing physical and psychological injuries to the plaintiffs. Hence, I hold the first, the second and the third defendants jointly and severally liable to compensate the plaintiffs for those injuries, whereas the fourth defendant is vicariously liable for the acts of the first three defendants. However, on the question as to quantum of damages, the claims made by the plaintiffs appear to be on the higher side. The figures obviously, do not commensurate with the degree and the nature of injuries, the plaintiff suffered. Indeed, in cases of this nature, when assessment of damages is made, it should be born in mind that damages are awarded to compensate the injured and not to punish the tort-feasor vide *Sinon Vs Sinon SLR 1977*. The grief or affliction on the plaintiff should be no opportunity for coining profit. Moral damages must be assessed by the Judge even though such assessment is bound to be arbitrary vide *Fanchette Vs. Attorney General SLR 1968*. Damages for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum, which the society deems fair, whereas the fairness is to be interpreted by the Court vide *Sedgwick Vs. Government of Seychelles SLR 1990*.

In the case of *Vincent Omath Vs. Attorney General - Civil side No. 45 of 2002*, the plaintiffs who received several slaps were awarded damages Rs2, 000/- each. In the case of *Fred Vs. Attorney General - Civil Side No. 154 of 2003*, the plaintiff suffered severe injuries due to blows, kicks, whipping with a stick under the feet, a wire in the eye and the police attempted to suffocate him by inserting a plastic bottle in the mouth. As

a result, the plaintiff therein had sustained diminished vision due injury to the left eye, had perforated ear drum with reduced hearing, contusion of the left foot and had been detained for 2½ days in custody. The Court awarded the plaintiff Rs40, 000/- damages for injuries, pain and suffering.

Coming back to the present case, in the light of all the above and taking all relevant circumstances into account, I award the following sums as compensation for injuries, pain, suffering, humiliation and distress:-

In respect of the first plaintiff	Rs 25,000.00
In respect of the second plaintiff	Rs 25,000.00
In respect of the third plaintiff	Rs 15,000.00
In respect of the fourth plaintiff	Rs 10,000.00

Total Rs75,000.00

Wherefore, I enter judgment for the plaintiffs and against the defendants jointly and severally in the total sum of Rs75, 000/- with interest on the said sum at 4%, per annum - the legal rate - as from the date of the plaint, and with costs.

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D. Karunakaran

Judge

Dated this 7<sup>th</sup> day of November 2005