

IN THE SUPREME COURT OF SEYCHELLES

JOHN BRISTOL

PLAINTIFF

VERSUS

UNITED CONCRETE PRODUCTS SEYCHELLES LTD

Rep by General Manager Sony Payet

DEFENDANT

Civil Side No 225 of 2005

Mr F. Ally for the Plaintiff

Mr. G. Ferley for the Defendant

JUDGMENT

B. Renaud J

The Plaintiff entered his Complaint on 6th July, 2005 claiming the sum of SR778,766.86 with interest and costs which he particularised as follows:

i.	Pain, suffering, distress, discomfort, anxiety.	- SR.500,000.00
ii.	Permanent scar and deformity	- SR 40,000.00
iii.	Loss of amenities and enjoyment of life	- SR 70,000.00
iv.	Loss of future earnings (SR1,500 per month for 8 years)	-SR.144,000.00
v.	Air ticket and accommodation	- SR 13,408.00
vi.	Expenses to purchase foreign exchange for the purpose of attendant's presence	- <u>SR. 11,247.86</u>
Total		- <u>SR.778,655.86</u>

The Plaintiff is the said sum on the allegation that he suffered damage by an accident

arising out of and in the course of his employment with the Defendant. It is the case of the Plaintiff that the accident was caused by the *faute* and/or negligence of the Defendant, its servants or agents.

The Defendant denied all the material allegations of the Plaintiff and put the Plaintiff to strict proof thereof. The Defendant also averred that if the Plaintiff suffered any injury it was not through the Defendant's fault.

The Plaintiff is 57 years old and had been married for the past 26 years and has 3 children. He started working for the Defendant since 2002 as a JCB Operator. On 22nd November, 2002 he was working on a site at Beau Vallon and the JCB had a mechanical problem. Upon the instruction of his Superior, Mr. D'Offay, he drove the JCB very slowly and reached to Providence where he cleaned the JCB and showed Mr. D'Offay what he believed to be the cause of the problem with the wheel. When the Mechanic came he found more problems. Mr. D'Offay asked the Plaintiff to show the Welder where the problem was and to help the Welder because there was nobody else there.

The Plaintiff helped both the employees of the Defendant, namely, the Mechanic and the Welder in carrying out the repairs on the JCB. The Plaintiff was required to lift a metal block weighing about 40 kgs to place it in a position for the Welder to stand on in order to repair the JCB. Even that was not part of his usual job the Plaintiff complied with the request and he lifted that metal block and carried it some few meters. He did that because Mr. D'Offay instructed him to help out. When lifting the metal block he felt something "released" in his waist and felt a burning sensation. Mr. Gerard Albert came and asked about the repair works and the Plaintiff told him that he had to go home because he had lifted a heavy piece of metal. His employer did not provide him with any lifting equipment to assist in the lifting. There were no other workers around to help.

The next day the Plaintiff went to work with a burning sensation in his waist. On that day he informed Mr. D'Offay that he had lifted a heavy metal block and his back was painful. He started to have back pain from then on, so he worked up to noon then went home.

The Defendant, despite being aware of his complaint of accident at work, did not report the matter to the Ministry of Employment until after the 12th January, 2009 when the Plaintiff got a Medical Certificate from a Specialist.

The Plaintiff went to see a Doctor at English River Clinic the next day being the Sunday following and was given pain killer. He reported for work on the Monday and worked slowly for 3 days and then had to leave on the Wednesday to see the Doctor again. He was given one day medical leave. The pain increased and became more acute and more painful. He went 3 times to the Casualty Department of the Victoria Hospital and see Doctors Madeleine, Marie and the Specialist Orthopedic who had come from Reunion Island. The Specialist gave him tablets and was given sick leave and ordered bed-rest.

On 3rd January, 2009 Mr. Joseph Isnard, a Representative of the Defendant phoned the Plaintiff and told him that he had to come to work. He informed Mr. Isnard that he could not wake up from the bed.

The Plaintiff went to Mount Elizabeth Hospital in Singapore for surgical operation. He stayed there for 8 days. He could not go back to work because he was almost paralysed in his lower body. He had further medical leave.

The Plaintiff later saw Dr. Jaffa and Dr. Moreno who are both Orthopedic Specialists at the Victoria Hospital. At the time of testifying the Plaintiff was being attended to by Orthopedist

Dr. Louange at the Victoria Hospital.

The Plaintiff described the pain that he went through as severe and it goes down his legs. Before the incident he was normal but now he cannot drive the JCB because of the pain and upon Doctor's order. The Plaintiff showed the Court the scar on his body. His left leg is shorter than the other as a result of the accident. He cannot have sexual intercourse with his wife anymore and his sex and married life has been affected negatively. He can no longer carry anything. That situation affected him very much now.

When he worked for the Defendant, the salary of the Plaintiff was SR4700.00 per month. The Plaintiff is now employed by Hunt Deltel Company earning SR3,100.00 per month. He drives a pick-up. That means a drop of SR1600.00 in salary per month. He paid for his ticket, pocket money and accommodation when he went for overseas treatment in Singapore. He had to take his wife to accompany him to Singapore because he was in a wheel chair and would have been able to manage in Singapore without her assistance.

The Plaintiff sent a letters of demand to the Defendant on 16th June, 2003 and 10th December, 2003 which are now exhibits **P4** and **P5**. The Defendant paid the Plaintiff for sick leave that was given by the Doctor.

When the Plaintiff was on medical leave he received a letter of termination , exhibit **P2**, and in that letter he was told not to pass by his employer's premises for a period of 1 year. His employer had previously paid his salary for 6 months but then deducted that money from his terminal pay. It was after the Plaintiff referred the matter to the Ministry of Employment that the Defendant refunded him back the money.

The Plaintiff emphasized that he could not refuse to perform the work he was asked to do by Mr. D'Offay on that fateful day because on a previous occasion when he refused to wash

the JCB because he was not given protective clothing, he was issued him with a warning letter for refusing a lawful order. The Plaintiff felt then that the warning letter was not justified so he gave his notice to quit work. Mr. Albert the Managing Director of the Defendant then called the Plaintiff in his Office and asked him not to leave and his salary was increased to SR4,700.00.

On the day that he was required to lift the heavy metal block he could not refuse to do it fearing the consequence in the light of that previous experience.

Under cross-examination the Plaintiff explained that at the time of the incident the Mechanic was lying underneath the JCB fixing the wheel. The Welder and himself (Plaintiff) were at the back fixing the shovel of the JCB. The Plaintiff could not have asked any of the others to help in lifting the metal block as there was no one else there.

The Plaintiff had a total of 13 sessions of medical leave granted by Doctors over the period 26th November, 2002 to 30th June, 2003, as per **Exhibit D2**.

Mrs. Erline Bristol is the wife of the Plaintiff testified that the Plaintiff is now not a fit person as he used to be prior the accident at work on 22nd November 2002. She corroborated the evidence of the Plaintiff with regard to visits at the Hospital, treatment he received, sick granted by the Doctors as she was the one who accompanied the Plaintiff to the Doctors on all the occasions. The Plaintiff was still in pain, and his condition appeared to worsen so she went with the Plaintiff to the Casualty Dept at the Victoria Hospital because the Plaintiff was walking with a stick as support. X-ray was done and he was given sick leave. She accompanied the Plaintiff again to see the Doctor on 3 other occasions.

By 3 January, 2003 the health condition of the Plaintiff had not improved. He was unable to do any work, was in bed and cared for by his mother-in-law. The witness went to see Mr.

Albert the employer of the Plaintiff in April, 2003 to discuss the situation of the Plaintiff. The employment of the Plaintiff was terminated without further pay and he had not been back at work since then.

She confirmed that she accompanied the Plaintiff to Singapore for further medical treatment and he was subjected to two surgical operations. He was hospitalized for 8 days and was only released from hospital on the very day that he was returning to Seychelles. He was given 3 months sick leave. They paid all their expenses to go to Singapore.

According to her, the Plaintiff is not the same ever since. His personality has changed, his behavior towards the children changed. They are now not performing as husband and wife and are now not having any intimate relationship. She stated that when the Plaintiff was working, he was a dedicated worker, he would leave home at 5.30 a.m. and would come from work at 7 p.m. His place of employment was like his home. Anytime his employer would call him he would go and work.

At the request of the Defendant the Court went on a Locus in quo of 3rd June, 2008 on the premises of the Defendant at Pointe Larue.

The Defendant adduced evidence of Roland D'Offay who has been in the employment of the Defendant for the past 11 years. He is now the Director of Operations and knows the Plaintiff. He last saw the Plaintiff in September, 2008 at Providence leveling the load in a Truck with a spade. On that day the Defendant appeared normal.

An employer is bound to provide a safe system of work to his employee. Failure to do so amounts to a '*faute*'. (***Adolphe & or v Donkin (1983) SLR***). It is the duty of the employer to ensure that the work in which his employee is engaged should be safe, and failure to do so

constitutes 'faute', and he is responsible for any damage that results to the employee. (*Servina v W&C French (Sey) Ltd (1968) SLR*).

On the basis of the evidence I find that the Defendant as an employer failed to provide a safe system of work to the Plaintiff on that fateful day which constitute a 'faute' and as such the Defendant is liable for the damages suffered by the Plaintiff in terms of **Articles 1382; 1383 and 1384** of the CCsey..

The Plaintiff was born on 30th July, 1949. He has undoubtedly suffered pain, injury, distress, discomfort, and anxiety. Dr. Louange an Orthopedic Surgeon in his evidence confirmed that the Plaintiff sustained central and left sided disc protrusion and difuse central bulge in disc, as well as, lumbar canal stenosis, and disc prolapsed. He also suffered low back pain with associated left sided sciatica which necessitated surgical operation in Singapore. The Plaintiff's marital life has been adversely affected. His personality has changed for the worse. He cannot now earn the level of wages as he used to and as he cannot perform heavy duty. He can however operate a pick up truck. He incurred considerable expenses to travel to Singapore for medical treatment.

In the final analysis I find that the Plaintiff has satisfied this Court on a balance of probabilities that he indeed suffered loss and damage arising out of the 'faute' of the Defendant and for which the Defendant is liable to him. Having given consideration to the claim set out by the Plaintiff and in the light of evidence before this Court I make the following award of damages:

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|------|---|-----------------|
| i. | Pain, suffering, distress, discomfort, anxiety. | - SR. 60,000.00 |
| ii. | Permanent scar and deformity | - SR 10,000.00 |
| iii. | Loss of amenities and enjoyment of life | - SR 40,000.00 |

iv.	Loss of future earnings (SR800 per month for 8 years)	-SR. 76,800.00
v.	Air ticket and accommodation	- SR 13,408.00
vi.	Expenses to purchase foreign exchange for the purpose of attendant's presence	<u>-SR. 11,248.00</u>
	Total	<u>- SR.211,456.00</u>

I accordingly enter judgment in favour of the Plaintiff as against the Defendant in the total sum of **SR.211,456.00** with interest and costs.

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B. RENAUD
JUDGE

Dated this 21st day of October 2010