

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES HOLDEN AT
VICTORIA

Civil Side No. 326 of 2009

Eugene Savy

Plaintiff

Versus

Sodepack Industries Ltd represented by
Joachim Kwast

Defendant

Teresa Micock for the Plaintiff

Guy Ferley for the Defendant

JUDGMENT

Egonda-Ntende, CJ.

1. The plaintiff was at all material times an employee of the defendant company. It is contended for the plaintiff that on the 18 February 2005 the plaintiff was instructed by an agent, employee or representative of the defendant to carry out repairs to the roof of the defendant's factory premises at Providence. While carrying out this work the plaintiff fell off the factory roof onto the concrete floor sustaining serious injuries.
2. It is contended for the plaintiff that this accident was caused by the faute of the defendants, their agents and or employees. The particulars of the 'faute' are (a) Requiring the plaintiff to climb onto the roof. (b) Failing to keep the roof safe for use by the plaintiff. (c) Failing to provide any or

adequate safety equipment to perform work on the roof. (d) Failing to provide proper supervision when the plaintiff was on the roof. (e) Failing to prevent the plaintiff from falling. (f) Failing in all circumstances to provide a safe place and system of work at the site.

3. The plaintiff was taken to Victoria Hospital, unconscious, and was admitted. He remained unconscious for 3 weeks and was only discharged from the Intensive Care Unit on 14 March 2005. The plaintiff suffered pain and shock; bleeding from the right ear; suprachoroidal haemorrhage; multiple rib fractures; haemothorax; internal bleeding; and frozen shoulder.
4. The plaintiff continues to undergo physiotherapy treatment at home and is severely limited in his activities. He is unable to return to his pre accident employment and is unable to work. The Medical Board recommended premature retirement as a result of his injuries.
5. The plaintiff claims loss and damage particularised as follows: (a) loss of earnings due to enforced early retirement SR 658,800.00; (b) personal injuries SR 50,000.00; (c) moral damages for pain, suffering and loss of amenity SR 150,000.00 totalling to a claim of SR 858,800.00.
6. The defendant denied the plaintiffs claim putting him to strict proof. At the same time it contended that the defendant's insurer, without admission of liability, settled the plaintiff's claim in fully and finally wherefore it prayed that this suit be dismissed with costs.
7. When this case up for trial the defendant was absent though there was counsel holding brief for defendant's counsel on record. Hearing

proceeded in presence of that counsel, Mr. Julie and on the next date neither the defendant, its counsel on record, or Mr. Julie, turned up and hearing proceeded *ex parte*. The plaintiff testified and called additional witnesses.

8. The plaintiff's evidence in this matter is unchallenged. None of the plaintiff's witnesses including the plaintiff were cross examined. Neither did the defence adduce any evidence in support of its case.
9. The plaintiff was employed by the defendant as a machine operator and did other odd jobs at the factory as instructed from time to time. The plaintiff was instructed by the defendant's Electrical Engineer to carry out certain repairs on the roof of the plaintiff's factory at Providence. He was to replace a leaking sheet.
10. While on the roof with another worker, Noris Cole, PW2, as they were trying to fit a new sheet onto the roof, plaintiff does not recall what exactly happened but he must have fallen on the ground and lost consciousness. PW2 saw him fall without noticing what caused the fall. Plaintiff woke up in Victoria Hospital 21 days later. At work he had not been provided with any protective and safety equipment save for shoes. He had no helmet. There was no platform to work from at the roof level.
11. Members of staff picked him up from the floor, put him in a van and drove him to hospital. He was unconscious with blood coming out of his ears and with multiple injuries. The plaintiff testified that 2 days after he left intensive care unit he was discharged from Victoria Hospital. He had pain in the arm and shoulder was injured. He suffered 3 broken ribs. Prior to this accident, as a young man of 18 he had suffered from epilepsy but

the symptoms disappeared when he was 25 years of age. Now he often loses control and does not know what he is doing.

12. He is unable to bathe and his wife has to help with both bathing and toilet visits. He forgets things fairly quickly. He continues to suffer a lot of pain and at times has to be taken to hospital for an injection to get relief. He also states that he sustained brain injury with a blood clot in his vessel. He believes that he fractured his skull and continues to bleed from his nose from time to time. He also has a bulge in his spine due to the fall.

13. The plaintiff is unable to work now and earn a living. He is helpless and at times impulsively violent to those around him. He is now only about 46 years old and a medical board has concluded that he cannot work. He was earning SR 2,750 per month and a bonus of SR 300 per month. These sums excluded overtime. He is no longer in employment. SACOS, the insurer for the defendant paid him SR 35,000.00 as interim payment. He never agreed with them that this would be the final payment.

14. PW3 was Dr. Morel working with the Intensive Care Unit of Victoria Hospital. He is the author of a medical report, exhibit P2. Plaintiff was admitted to the Intensive Care Unit on 18 February 2005 with diagnosis of polytrauma, head and chest injury after a fall from a height. He was agitated, disoriented, and confused though he could move all limbs. He was bleeding from the right ear. Investigations included a CT scan on the brain that revealed minimal subarachnoidal haemorrhage, deviation of central line more than 6 mm. Chest X-ray revealed haemothorax, minimal pneumothorax and multiple rib fractures on the right side.

15. The plaintiff was admitted, sedated, intubated, and connected to

mechanical ventilation on CMV mode. A thoracic drain was inserted in the right 9th intercostal space, and about 500 ml of blood drained.

Multiple drugs/medicines were administered and after general improvement he was discharged from the Intensive Care Unit on 14 March 2005.

16. Ms Micock, learned counsel for the plaintiff submitted that the defendant failed to provide a safe system of work in accordance with The Occupational Health and Safety Regulations SI 61 of 1991. The defendant was under a duty to provide a platform for a worker to stand on and perform such work as was to be done while not standing on the ground. In the absence of a platform the defendant was duty bound to provide a safety net and belt, which was not done in this case. She submitted that the plaintiff had established that the defendant was liable for the injuries and loss sustained the plaintiff. She referred to the case of Servina v WNC French Seychelles Ltd [1968] SLR 127 in support of the plaintiffs case.

17. Ms Micock further submitted that the plaintiff was forced into early retirement from work due to the injuries sustained, losing the opportunity to continue working and earn income. The plaintiff was 44 years old at the time of the accident and could have continued to work until he was 63 years old. He was now entitled to claim loss of earnings at the rate of his monthly salary of SR 3,075.00 multiplied by 12 months in a year and the years he would have worked between his age at the time of the accident and his retirement age. This totalled to SR658,800.00.

18. The plaintiff claimed SR 50,000 for the multiple injuries suffered which Ms Micock submitted ought to be the minimum allowable for the nature

of injuries suffered. She referred to the case of Kenny Marie v Philip Rath, Civil Side 268 of 1999 (unreported) in which the Supreme Court has awarded SR 25,000 for a plaintiff much younger than the plaintiff who had suffered significantly less injuries and had recovered sufficiently to be able to continue working.

19. With regard to moral damages Ms Micock submitted that these are in a sense arbitrarily fixed by the court taking into account what the plaintiff had suffered. She referred to the case of Franchete and others v The Attorney General [1968] SLR 111 in support thereof. In this particular case SR 150,000 would be sufficient to compensate the plaintiff for his pain, suffering and loss of amenities of life.
20. I am satisfied that in the circumstances of this case the defendant was under a duty both under the Occupational Health and Safety Regulations as well as on the basis of a duty arising out of Article 1382 (2) of the Civil Code of Seychelles to provide a safe system of work for its employees for all tasks that were assigned to its employees. In this particular case the defendant woefully failed to do so, resulting in the plaintiff sustaining very severe, life changing injuries, rendering him unfit not only to work but also unable to live independently on his own. He can't wash himself. He can't use other bathroom facilities without help. The plaintiff's life now is quite miserable.
21. The plaintiff has established his loss of earnings and that it was the direct result of the accident. He is entitled to succeed and recover damages for loss of earnings. I note that the sum claimed would be his gross earnings for the period in question. In a sense this would be receiving an accelerated benefit, allowing the plaintiff to capitalise his earnings and

earn possible further income on the same which would not have been possible had he continued to earn the same monthly. This should not necessarily operate against the plaintiff given the fact that since this accident and filing of this action, inflation and economic reforms have adversely impacted the value of the rupee and it can no longer fetch the kind of goods it used to fetch in 2005.

22. The principle applicable, as derived from Article 1383 (1) of the Civil Code of Seychelles, is to compensate the plaintiff for his loss and not to punish the defendant. What is required is adequate compensation to the plaintiff for the loss he has suffered. I find that the plaintiff is entitled to the sum claimed for loss of earnings. I award the SR 658,800.00 to the plaintiff under this head of claim.

23. Given the level of the life changing injuries and the incapacity suffered by the plaintiff an award of SR 50,000 for personal injuries would appear to be on the lower side but that is what the plaintiff has claimed. I award the said amount to the plaintiff.

24. According to Souyave, J., (as he then was) in Franchette and others v Attorney General (Supra) the assessment of moral damages is arbitrary. In this instance I do take account the pain and suffering that plaintiff incurred after the incident complained of, which continues to this day. In addition the plaintiff is no longer able to lead an independent life. He cannot go to the bathroom or toilet without assistance of someone else. He has lost any sense of privacy in carrying out such tasks as he must by nature. I award moral damages of SR 150,000 to the plaintiff.

25. The adjudged sums shall bear interest at the legal rate of 4% per annum

from today till payment in full. The defendant shall also pay to the plaintiff costs of this action.

Signed, dated and delivered at Victoria this 22nd July 2010

FMS Egonda-Ntende
Chief Justice