

ROSE v GOVERNMENT OF SEYCHELLES

(2011) SLR 54

A Derjacques for the plaintiff
A Madeleine for the respondent

Judgment delivered on 25 March 2011 by

RENAUD J: This is a suit entered by the plaintiffs on 27 November 2009 claiming the total sum of R5,460,000 from the defendant in damages. The action is based on fault.

The defendant admitted liability and only contended on the issue of quantum of damages. At the sitting of the Court on 12 July 2010, counsel for the respective parties agreed that they will make their respective written submissions on the issue of the quantum of damages and the Court will adjudicate the matter based on those submissions.

Counsel for the plaintiffs submitted that they are the common law wife and child of the deceased, Mr Mervin Pierre who died on 6 July 2009.

The submissions of the plaintiffs are that on 25 July 2009 at 1900 hours, the Seychelles Police Force, through its officers, arrested the deceased, detained him at Beau Vallon Police Station, and eventually killed him, whilst acting within the course of their duties. The particulars of fault were rehearsed in the plaint:

- i. Arresting the deceased, Mervin Pierre, unlawfully and without cause.
- ii. Falsely and unlawfully detaining and imprisoning the deceased Mervin Pierre, without cause, at the Beau Vallon Police Station.
- iii. Killing Mervin Pierre.
- iv. Causing the death of Mervin Pierre.
- v. Negligently and unlawfully causing the death of Mervin Pierre.
- vi. Assaulting Mervin Pierre.
- vii. Failing to follow proper and or lawful police procedures for arrest, detention and imprisonment.
- viii. Being drunk and disorderly in a police station.
- ix. Failing to conduct themselves and exercise police powers in a humane, civilized and proper manner.
- x. Acting brutally and inappropriately.

The plaint rehearsed the particulars of damages-

(a) 1 st plaintiff (administer to the estate), false arrest	R50,000
(b) 1 st plaintiff (administer to the estate), unlawful detention and imprisonment from 1900 hours on 25 July to 1100 hours on 16 July 2009	R100,000
(c) 1 st plaintiff for assault to Mervin Pierre	R50,000
(d) 1 st plaintiff distress, anxiety, shock, pain and knowledge of impending death	R300,000

(e) 2 nd plaintiff distress, shock, pain, psychological pain, humiliation for the death	R1,000,000
(f) 3 rd plaintiff distress, shock, pain, psychological pain, humiliation, emotional trauma for the death	R1,000,000
(e) 3 rd plaintiff for economic loss and maintenance for 10 years at R 3,000 monthly	R360,000
(e) 2 nd plaintiff economic loss and maintenance for life as common law, at R 2,000 monthly	R600,000
(f) Special damages reflecting culpability of defendant in these special circumstances	R1,000,000
Total	5,460,000

Counsel for the plaintiffs cited the following authorities in support of quantum of damages:

- (a) *Charles Ventigadoo v GOS* CS No 407 of 1998, delivered on 5 October 2007, at the Supreme Court.
- (b) *Maurice Lousteau Lalanne v Regar* CS No 226 of 2002 delivered on 23 October 2006, Supreme Court.
- (c) *Regar Publications v Maurice Lousteau Lalanne* SCA 25 of 2006, delivered on 24 August 2007.

The plaintiff submitted that the above cases established the following principles-

- i. Damages, in general are compensatory and not punitive.
- ii. Difficulty in assessing damages should not curtail the making of an award of damages, even if arbitrary.
- iii. Damages should be fair and reasonable.
- iv. Fluctuation in the cost of living is a factor that must be considered including the devaluation in the rupee.
- v. Awards in United Kingdom need not be followed because of the difference in the socio-economy between the two countries.
- vi. Exemplary damages may be awarded not only to compensate but for damages done to the plaintiff's reputation (CS No 226/2002) per Perrera J (S Court p 23)
- vii. The Court of Appeal, in SCA 25 of 2006 (p.12) stated -

Apart from the fact that exemplary damages should be specifically pleaded, they should be awarded only in cases within the following categories — (a) Oppressive arbitrary or unconstitutional action by servants of the government.

I have reviewed those cases and drew inspiration from them as to the relevant principles formulated in those cases. I note that the principles enunciated are not dissimilar from those advanced by the defendant.

The plaintiff submitted that it must be noted that total damages in *Ventigadoo*, for loss of an arm, were fixed at R500,000.

It is the submission of counsel for the plaintiff that the deceased, Mervyn Pierre, was killed by the defendant's employees in an abhorrent manner, which caused revulsion

throughout the nation and necessitated a public enquiry upon the Order of the President. The Seychelles Police are supposed to be guardians of law and order and are taxed to preserve human life. The greatest gift awarded to mankind is life. The foremost constitutional right is life. The deceased was arrested, assaulted and killed in a police station. The acts were purposeful, calculated and intended to cause pain and humiliation. Death resulted from this callous disregard for human life and dignity. The acts offend against law, human dignity, public safety, constitutionality, and threaten the fabric of society.

The plaintiffs have specifically pleaded for exemplary damages as follows; "special damages reflecting culpability of defendant in these special circumstances."

It is the view of counsel for the plaintiff that the harm done to the plaintiff, as he lay dying in a police cell, is incalculable. Although arbitrary, an award needs to be given. The permanent harm and damage to the wife and child is extreme, and they need to be maintained. The economic loss is permanent.

In the premises, the plaintiffs pray for an award of damages as prayed for in the plaint and to disregard the extremely low and ordinary offer of the defendant in the sum of R380,000.

On the other hand counsel for the defendants also made submissions.

She started by stating that on 12 July 2010 when the above matter was fixed for hearing, counsel representing the defendants informed the Court that liability was accepted in respect of those police officers who were in the police force on the material dates. The defendants also informed the Court that two offers had been made to the plaintiffs out of court for the settlement of this matter. The offers made to the plaintiff were:

On 8 February 2010 a total sum of R250,000 made up as follows:

- R 100,000 to Marie Michel Solana Rose
- R 150,000 to Master Romiro Pierre

On 9 July 2010 a revised offer in the total sum of R 380,000 made up as follows:

- R130,000 to Marie Michel Solana Rose
- R250,000 to Master Romiro Pierre

The defendants also informed Court that besides the R380,000, offered to the plaintiffs, other family members of the deceased who have claimed out of court have been compensated as follows: R100,000 to the mother of the deceased and R 40,000 to each of the 3 sisters and 4 brothers of the deceased.

Counsel for the defendants submitted that the defendant's position is that the sum of R380,000 offered to the plaintiffs is adequate and reasonable in all circumstances of the plaintiffs' case. She relied on the following authorities in support of her position:

- i. *Marie-Andre Jouanneau & Ors v Government of Seychelles & Anor* SCA4/2007
- ii. *Madeleine Delorie and Ors v CJ Pool* (CS No. 20/94)

- iii. *Mohamudally & Anor v Government of Mauritius* MR 1994 SCJ 350
- iv. *Hossen v Sparrow Insurance* 1996 SCJ 293
- v. *Seychelles Broadcasting Corporation v Bernadette Barado* SCA9/1994, 10/1994
- vi. *Fanchette v Attorney General* SLR (1968)
- vii. *Sinon v Sinon* (1977) SLR 209
- viii. *Jerry Adrienne v Commissioner of Police* Constitutional Side No 2 /1999

She stated that the principles arising out of the above cases and which are being relied upon in her submissions are:

Marie-Andre Jouanneau & Ors v Government of Seychelles & Anor SCA4/2007: A surviving concubine of a long stable and overt relationship is entitled to claim compensation for moral damages as well as for the loss of maintenance and support. When awarding moral damages, the Court should take into account the circumstances of each case, including the rate of inflation and costs of living whilst recognising that the "awards made by our Supreme Court for pain, grief and sorrow suffered by relatives of a deceased serve as a useful guideline".

Hossen v Sparrow Insurance 1996 SCJ 293 & *Mohamudally & Anor v Government of Mauritius* MR 1994 SCJ 350: The arbitrariness which characterises the monetary value of suffering can and should be countered by analysis of comparable awards made in cases decided as near as possible to the cases at issue.

Seychelles Broadcasting Corporation v Bernadette Barado SCA9/1994 10/1994

(Per Ayoola JA): "Exemplary damages are awarded where compensatory damages are inadequate. They are only awarded if the plaintiff is the victim of the punishable conduct. In assessing exemplary damages the court will consider if there double counting has occurred".

Fanchette v Attorney-General SLR (1968): That the pecuniary loss of a widow should be calculated on the amount the deceased normally expended on her, multiplied by a given number of years' purchase, which purchase should have regard to the age of the deceased and his condition. This should take into account contingencies such as the widow's possibility of remarrying.

Sinon v Sinon (1977) SLR 209: In a case of tort, damages are compensatory and not punitive.

I have no reason to disagree with the principles enunciated by the defendant as deduced from the cited cases.

In her submissions she drew the attention of the Court that comparable awards made in *Marie-Andre Jouanneau & Ors v Government of Seychelles & Anor*, *Madeleine Delorie and Ors v CJ Pool* and in *Eric Derjacques v The Commissioner of Police*, *Willy Charles v Attorney General* SCA No 11/2001 *Giovanni Marimba v Superintendent of Long Island Prison & The Government of Seychelles* *Alex Joubert v Attorney General* Civil Side No 8/2002 and *Christopher Fred v Attorney-General* Civil Side 154/2003 and were also relied upon in her submissions.

It is the position of the defendants that in respect of Marie Michel Solana Rose's claim (1st and 2nd plaintiffs):

1. The quantum claimed by the 1st plaintiff under subparagraphs (i), (ii) and (iii) of the Particulars of Loss and Damages, in her capacity of Administrator of the estate of Mervin Pierre and next of kin and representative for estate of the minor Romiro Pierre is manifestly unreasonable and excessive and should fail.

The claims under subparagraphs (i), (ii) and (iii) relates to the breach of the deceased Mervin Pierre's constitutional rights. Even if exemplary damages may be awarded where there is unconstitutional action by the servants of Government (*Regar Publications v Maurice Lousteau-Lalanne* SCA25/2006)(as relied on by the plaintiffs)), following the case of *Seychelles Broadcasting Corporation v Bernadette Barado*(Per Ayoola JA) they can only be awarded where the plaintiff is the victim of the punishable conduct. In the present case the 1st plaintiff is not the victim of the punishable conduct.

At any rate, by way of comparable analysis with the quantum of damages awarded by the courts to persons claiming that their constitutional rights (similar rights to the case at issue) have been or are likely to have been contravened, a total claim of R 100,000 as claimed by the 1st plaintiff under subparagraphs (i), (ii) and (iii) are manifestly excessive and unreasonable. In claims for damages for breach of constitutional rights the Constitutional Court has awarded minimal damages to those persons whose rights have been or are likely to have been contravened for the constitutional hurt. Vide: *Jerry Adrienne v Commissioner of Police*. Comparable awards by the Supreme Court and the Seychelles Court of Appeal in the following cases are also relevant: *Eric Derjacques v The Commissioner of Police* Civil Appeal No. 17 of 1995: a sum of R 10,000 was awarded for unlawful arrest and detention, *Willy Charles v Attorney General* SCA no 11 of 2001 a sum of R 20,000 was awarded for illegal detention for 4 days, *Giovanni Marimba v Superintendent of Long Island Prison & The Government of Seychelles* a sum of R 15,000 was awarded for unlawful detention and in *Vincent Omath & Ors v Attorney-General* Civil Side No. 45 of 2002 a total sum of R 9,000 was awarded to the plaintiffs for unlawful assaults, in *Christopher Fred v Attorney-General* a sum of R 40,000 for injuries, pain and suffering and in *Alex Jouberta* a sum of R 30,000 for pain, suffering, anxiety and inconvenience.

Hence, the claim under subparagraphs (i), (ii) and (iii) should fail.

2. The quantum claimed by the 1st plaintiff in her capacity as Administrator of the estate of the deceased Mervin Pierre under subparagraph (iv) of Particulars of Loss and Damages is manifestly excessive and unreasonable.

In applying the principle of analysis of comparable awards in cases decided on facts as near as possible as the case at issue (*Hossen v Sparrow Insurance & Mohamudally & Anor v Government of Mauritius*), the case of *Marie-Andre Jouanneau & Ors v Government of Seychelles & Anor* serves as a useful guideline on the award for distress, anxiety, shock, pain and knowledge of impending death. In *Marie-Andre Jouanneau* the Court of Appeal awarded R 30,000 to each of the minor

children of the deceased for the pain and suffering the deceased endured and suffered before he died.

Hence R 30,000 to the estate of the deceased Mervin Pierre for the distress, anxiety, shock, pain and knowledge of impending death that the deceased Mervin Pierre endured before his death is adequate and reasonable.

3. The quantum claimed under subparagraphs (v) and (ix) by the 2nd plaintiff in her own capacity for distress, anxiety, shock, pain and knowledge of impending death and for economic loss and maintenance for life is also manifestly excessive and unreasonable.

In *Marie-Andre Jouanneau*, the Court of Appeal awarded R 25,000 to the surviving concubine for distress, anxiety and shock.

Although the case of *Marie-Andre Jouanneau* serves as a useful guideline for comparable analysis of the awards for pain, grief and sorrow suffered by a surviving concubine, it is submitted that the degree of distress, anxiety, shock, pain and knowledge of impending death in *Marie-Andre Jouanneau* was greater than in the present case. In *Marie-Andre Jouanneau*, the deceased was shot by police officers and left suffering and bleeding on the ground for more than an hour. He was shot at around 8:30 am, was guarded by policeman who would not let the relatives go near nor assist the deceased. All this time the relatives and concubine of the deceased watched the said deceased suffer and die. In the present case, the relatives and the concubine of the deceased did not go through the same trauma of seeing the deceased suffer, die and being prevented from assisting him.

Based on the above, an award of R 25,000 to the 2nd plaintiff for distress, anxiety, shock, pain and knowledge of impending death is more than adequate and reasonable.

Taking into account the status of concubine under the law (no legal status of marriage: *Marie-Andre Jouanneau*) and the absence of reasonable certainty that 2nd plaintiff would have stayed in concubinage with the deceased for life had the deceased survived the incident or had the incident not been produced at all, the quantum claimed under subparagraph (ix) is manifestly excessive and unreasonable. An award for economic loss and maintenance to a surviving concubine has to represent a reasonable sum which the deceased would have normally spent on the plaintiff taking into account the possibility that she may marry or live in concubinage with another man in the future. It would be arbitrary for a court to make an award for economic loss and maintenance for life to a surviving concubine in absence of reasonable certainty that the concubine would have remained in concubinage with the deceased had the deceased survived the incident or had the incident not occurred.

A claim for economic loss and maintenance at R 2,000 per month next to a claim for economic loss and maintenance for a minor at R 3,000 per month in absence of evidence of the monthly earning of the deceased and his monthly contribution to the household and towards the maintenance of the 3rd plaintiff should not be easily believed.

Hence an award of R 75,000 for economic loss and maintenance is adequate and reasonable in all circumstances.

4. Justification of defendant's offer of R 130,000 to the 1st and 2nd plaintiffs:

1 st plaintiff as Administrator of estate of deceased Mervin Pierre next of kin and administrator of estate of Master Romiro Pierre for distress, anxiety, shock, pain and knowledge of impending death	R30,000
2 nd plaintiff for distress shock, pain, psychological pain, humiliation for the death	R25,000
2 nd plaintiff for economic loss and maintenance	R75,000
Total	R130,000

With respect to Master Romiro Pierre's claim, counsel for the defendants submitted that:

1. The quantum claimed under subparagraph (vi) is manifestly unreasonable and excessive taking into account: the arbitrariness of giving a monetary value to suffering; when compared to award of R 30,000 made in *Marie-Andre Jouanneau*: R 30,000 to each of the minor children of the deceased for the pain and suffering the deceased endured before his death and R 15,000 to the mother of the deceased for her own distress anxiety and stress and in *Madeleine Delorie*: R 10,000 to each of the children of the deceased for pain, grief and sorrow.
2. The claim under subparagraph (viii) of the Particulars of Loss and Damages is manifestly unreasonable and excessive taking into account that 3rd plaintiff is entitled by law to social benefits which are available until the said 3rd plaintiff becomes of age. A monthly sum of R 3,000 for economic loss and maintenance for a child of 9 years old is an exaggeration.

3. Justification of defendant's offer of R 250,000 to the 3rd plaintiff:

For distress, shock, pain, psychological pain, humiliation for the death	R30,000
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For economic loss and maintenance for 10 years at:

R 1,600 per month from time of death until attaining 10 years old (R 1,600 x12 x 2)	R38,400
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R 1,800 per month from 10 to 15 years old (R 1,800 x12 x 5)	R108,000
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R 2,000 per month from 15 to 18 years old (R 2,000 x12 x 3)	R72,000
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TOTAL	R248,400
Say	R 250,000

In addressing the claim under subparagraph (x) counsel for the defendants opined that is manifestly unreasonable and forms no part our law and should not be entertained. Damages being generally compensatory and not punitive: *Sinon v Sinon*.

Based on the above paragraphs, it is the overall submission of the defendant that this Court should find that the offer in the total sum of R380,000 to the plaintiffs as computed in these submissions is reasonable and adequate in all the circumstances of the case.

Counsel for both sides have assisted the Court by their thorough submissions and drawing on the experiences revealed in previous cases. However, I note that none of the authorities cited by the parties referred to a case which is similar to this present one. I suppose that it had never before in Seychelles had a suit for damages been prosecuted where police officers manhandled a citizen to the point that that citizen died as a result of their mode of manhandling whilst that person was confined in a cell within a police station. A different consideration has to be given to this particular case when determining the quantum of damages in view of its specificity, which I have endeavoured to do in order to reflect the situation.

In my determination of the quantum of damages, I have also given consideration to the reality of the changing circumstances in the purchasing power of the Seychelles Rupee over the last four years. As an example, in the year 2008 one US\$ could be purchased with about R5 whereas now one will need at least R12 to purchase one US\$. This suggests that the purchasing power of the Seychelles Rupee is now about one half of what it used to be at the time the cause of action arose in this suit.

I have also given very careful consideration to the principles contained in the various precedents submitted by both counsel and I have taken these into consideration wherever I have found them to be relevant to the case in issue.

I find that the quantum claimed by the plaintiffs as set out in the plaint is generally on the high side. I will not grant such damages in the circumstances of this case despite its particularity and specificity as I do not believe that this is justified in relation to damages normally awarded by the Court in instances where death occurred as a result of fault. However, in view of the particularity and specificity of this case, where the authority entrusted with the responsibility to oversee the security of citizens itself caused a fault on the citizen leading to death, I have made a reasonable award as "special damage".

I have further given careful consideration to the position of the defendants as to what they considered to be reasonable in the circumstances. I do not believe that they have been that realistic in view of the particularity and specificity of this case. Their proposals as to quantum, in my judgment, are too much on the low side.

In order to make such claims reasonable I believe that the defendant's proposals need to be adjusted upwards, which my final analysis would reflect based on the

principles of the precedents referred to. I have deemed it appropriate to set out the awards in relation to each plaintiff under the heads of claim proposed by the plaintiffs.

The 1st plaintiff Mervyn Pierre is the deceased and Marie Michel Solana Rose is acting in her capacity as Administrator of the estate of the deceased as well as in her capacity as the next of kin and representative of the minor Romio Michel France Pierre the son of the deceased. This deceased suffered for some time before he passed away. From the time of his arrest to the time he died he experienced moral turpitude. Obviously, it does not appear that he died instantly.

He must have suffered pain etc before he actually died. It is on that premise that I have awarded him moral damages.

The 2nd plaintiff Marie Michel Solana Rose is the concubine of the deceased and the mother of Romio Michel France Pierre the son of the deceased at the time of his death. This plaintiff is not an elderly person and the law of probability led me to believe that she will sooner or later pick up the pieces and continue with her life in the company and with the support of another partner. Although she was not married to the deceased, it is now established jurisprudence in our jurisdiction that a concubine who had been living overtly as husband and wife ought not be entirely deprived of claiming damages in the circumstances.

The 3rd plaintiff Master Romio Michel France Pierre is the son of the deceased and is the sole heir and successor to the estate of the deceased.

I have assessed the quantum of damages in respect of the parties to this suit as follows:

1 st plaintiff Mervyn Pierre – Deceased	
(a) Damages for false arrest	R40,000
(b) Damages for unlawful detention and imprisonment from 1900 hours on 25 July to 1100 hours on 26 July 2009	R50,000
(c) Damages for assault to Mervyn Pierre	R50,000
(d) Damages for distress, anxiety, shock, pain and knowledge of impending death	R90,000
	R230,000
2 nd plaintiff Marie Michel Salana Rose	
(a) Damages for distress, shock, pain, pyshcological pain and humiliation for the death	R70,000
(b) Damages for economic loss and maintenance for 5 years as common law wife, at R 1,500 monthly	R90,000
	R160,000
3 rd plaintiff Master Romio Michel France Pierre	
(a) Damages for distress, shock, pain, psychological pain humiliation, emotional trauma for the death of his father	R100,000
(b) Damages for economic loss and maintenance for 10 years at R 2,500 monthly	R300,000

	R400,000
Special Damages	
Special damages reflecting culpability of defendant in these special circumstances	R150,000
Total	R940,000

For avoidance of doubt, the award of damages under the head of "Special Damages" in addition to the award of damages made to the 1st plaintiff shall be credited to the succession of the estate of the deceased to be administered in accordance with the law. Awards made in respect of the 3rd plaintiff who is a minor child shall be invested in a scheme of investment approved by this Court.

In the final analysis I enter judgment in favour of the plaintiffs as against the defendant in the sums stated above amounting in total to R940,000, with interest and costs.