IN THE SUPREME COURT OF SEYCHELLES

Damascene Felix **Plaintiff**

Vs

Nelton Wirtz **1st Defendant**

Weston Wirtz

(Both of Cascade, Mahé) **2nd Defendant**

Civil Side No: 193 of 2006

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Mr. C. Lucas for the plaintiff

Mr. D. Sabino for the defendant

D. Karunakaran, J.

JUDGMENT

This is an action in tort. The plaintiff herein claims Rs.103, 500/- from the defendants towards loss and damage he sustained following a road traffic accident occurred allegedly due to negligent operation of the defendants' motor vehicle on the public road. On the other side, the defendants deny liability and dispute the quantum of damages claimed by the plaintiff in this matter.

At all material times, the plaintiff was the owner of a motor vehicle namely, a car - Toyota Corolla- 1986 Model - registration number S451. The 2nd defendant

was the owner of a car registration number S384. On the 12th March 2003, the plaintiff had lent his car for the use of his friend one Mr. Allen Jerome. While that friend was driving the plaintiff's car on public road at Pointe Larue, the defendant's car driven by the 1st defendant came behind and collided with the rear part of the plaintiff's car. According to the plaintiff, the collision occurred due to negligent operation of the defendants' car at the material time in that, the 1st defendant drove his car recklessly without keeping a proper lookout for the moving traffic in front and collided at the back of the plaintiff's car. As a result, the plaintiff's car sustained extensive damage to the rear part of the vehicle.

The plaintiff testified that following the collision, the defendants on the spot, conceded that they were at fault. They jointly admitted liability for the accident and so agreed to repair the plaintiff's car at their own expense and restore it to its original condition. Following that agreement - nearly three months after the accident- the defendants removed the damaged car from the plaintiff's possession in order to get repairs done at the garage of one Allen at Providence Industrial Estate. However, the repairs were not carried out within a reasonable period. The plaintiff testified that during the period of procrastination from 2003 to 2005 his car was simply lying there. He visited the garage on a number of occasions to check on the progress of the repair-works but there was none. Despite the roadworthiness of the vehicle prior to the accident, the plaintiff noticed that some of the spares unrelated to the repair works were being gradually removed from the car while being kept in the garage. Particularly, the alternator, cut out regulator, left front headlight, grill, indicator, fuel tank stopper, fuel tank lock were missing. Nearly after two years, the plaintiff noticed some minor repair works had been done. However, those works were not carried out properly and were of poor workmanship. During 2005, the plaintiff took photographs of the car showing its defective condition and the missing of spares from different parts of the car. The plaintiff also produced all those (eight) photographs in evidence, vide exhibit P3.

According to the plaintiff, he did not want to take back the car from the garage due to defective works and missing parts. In the mean time, the defendant wrote a letter dated 21st March 2005 in exhibit P6, to the plaintiff requesting him to collect the car from the garage as the repairs had already been carried out and the car had been restored to good condition. According to the plaintiff that was not the case. The plaintiff further testified that the 1st defendant in subsequent negotiations agreed to replace all the missing parts that had been removed and rectify the defective works. However, after a couple of months, the plaintiff to his surprise noticed his car, which had been deposited with the mechanic for repairs, was being used by the defendants without plaintiff's knowledge or authority or consent. In fact, the defendants had parked that car on the public road near "Hot Pot Takeaway" although its road licence and the insurance had not been renewed by the plaintiff for the road-use. When plaintiff saw the car that time on the public road, its condition was worse than when he had last time seen in the garage. The workmanship was very bad. Hence, the plaintiff did not want to accept the car in that bad condition. The defendants therefore agreed to purchase the car as it was then, from the plaintiff for the sum of Rs 35,000/- in full and final settlement of the plaintiff's claim vide exhibit P6. However, the offer was not acceptable to the plaintiff.

Finally, on the 18th July 2006 the 2nd defendant handed over possession of the car back to the plaintiff. As soon as plaintiff repossessed the car, he took a number of photographs of the car showing the missing parts and the state of repairs. All those photographs were produced in evidence and marked as exhibit P5. A couple of weeks later, the car was examined and evaluated by a licensed motor vehicle assessor, who works for H. Savy Insurance Company. According to the assessor's report - vide exhibit P2 -although all damages in the car had been repaired the workmanship was very poor and unsatisfactory. The car was valued at Rs20, 000/- The plaintiff further testified that his car was worth about Rs50 000/- before got damaged in the accident. He had in fact, bought the car for his

personal use. As he was working as IT technician with SBS, he was using the car to commute for his work from his residence at Les Canelles. From the time of accident almost for about three years, the plaintiff stated that he could not use his car as it was in the garage and suffered loss of use and enjoyment. The plaintiff further testified that as a result of the accident and inordinate delay in getting his car back, he suffered inconvenience, stress and hardship. PW2, one Winsley Felix, younger brother of the plaintiff also testified corroborating the evidence given by the plaintiff on material particulars.

In the circumstances, the plaintiff claims that he suffered loss and damage as follows:

Loss of value of the car	*Rs. 30,000. 00*
Loss of use and convenience from	
13th March 2003 to 18th July 2006	
(39 months at Rs. 1500/- per month)	*Rs. 58,500. 00*
Moral damage	*Rs. 15,000. 00*
Total	***Rs 103,500. 00***

Hence, the plaintiff seeks judgment against both defendants in the sum of ***Rs 103,500. 00*** with interest and costs.

On the other side the defendants in their statement of defence have denied liability stating that they were not at fault and nor did they admit liability for the accident. However, the 1st defendant while testified in Court unequivocally admitted that soon after the accident, he agreed with the plaintiff that he would repair the car rectifying all the damages sustained from the accident. According to the defendants, the plaintiff however, did not provide them the necessary quotation in time to carry out those repairs. The delay in this respect also

contributed to the delay in effecting the repairs to the vehicle. The accident took place on the 12th March 2003 and the plaintiff provided the quotation to defendants only in June 2003, which quotation was exorbitant and unreasonable. Therefore, the defendants agreed to take the vehicle to a mechanic of their choice and get it repaired at a reasonable cost. After the completion of the repairs, the defendant by a letter dated 21st March 2005 requested the plaintiff to take back the vehicle from Allen's garage. However, the plaintiff did not. According to the defendants, when the vehicle was in the garage, the spares unconnected to repairs were not removed but were *in situ*. The repairs were carried out effectively. The workmanship was also of reasonable standard. Furthermore, the 1st defendant testified that he never agreed to replace the missing spare parts and rectify the defects as there was no need to replace any spare or to rectify any defect as all repairs had been duly carried out. After the completion of the repairs , although the vehicle was roadworthy the plaintiff was refusing to take back the car, alleging unfounded defects. Hence, the defendants made an offer to purchase the vehicle from the plaintiff. It was in no way a settlement offer. It is also the case of the defendants that on the 18th July 2006 the plaintiff without any notice to the defendants, suddenly came upon the defendants' premises at Cascade, requested for the keys and drove away the vehicle. In the circumstances, the defendants seek dismissal of the action.

I carefully considered the plaintiff's claim in the light of the entire evidence on record. Obviously, the issues that arise for determination herein do not involve any points of law. They simply revolve around the credibility of the witnesses particularly, on factual issues. On the question of credibility, I believe the plaintiff in every aspect of his testimony. From his demeanour and deportment, he appeared to be a reliable witness. His evidence on the material particulars is cogent, reliable, consistent and corroborative. With regard to the plaintiff's claim in respect of the alleged road traffic accident, loss of value of the car, consequential loss and damages, I accept the uncontroverted evidence of the

plaintiff. I find on a balance of probabilities that:-

- the accident was caused solely due to negligent operation of the defendants' vehicle on public road as claimed by the plaintiff in this matter.

- Subsequent to the accident, the defendants did admit liability for the accident and agreed to repair the damaged car and make good at their own costs.

- The defendants did not return the car to the plaintiff, within a reasonable period and in roadworthy condition.

- The actual market value of the plaintiff's car at the time of the accident was at Rs: 50,000/-

- The value of the car got depreciated from Rs50, 000/- to Rs20, 000/- due to damage resulting from the accident and loss of spares from the vehicle. This caused the plaintiff a net loss in the sum of Rs30,000/- due to loss of value.

- The plaintiff's suffered loss of use of his vehicle for over three years. However, his claim at the rate of Rs1500/- per month in my view appears to be exaggerated and unreasonable. First of all, having known that his car had been lying at the garage without any progress in repair works, the plaintiff as a prudent person in my view, should have taken legal steps within a reasonable time to mitigate the damage due to loss of use, either by using public transport or seeking a legal remedy at the earliest in a Court of law. But, he has waited for 3 years and has now come before the court with the instant action. Hence, as I see it, the blame has to be suitably apportioned between the parties in respect of loss of use. Having regard to all the circumstances of the case, in my view, the sum of RS: 10,000/- would be a reasonable and appropriate amount that should be awarded globally towards loss of use. For moral damages the plaintiff suffered due to inconvenience and loss of use, I award the sum of Rs: 5,000/-

In the final analysis, I therefore, enter judgment for the plaintiff and against both defendants jointly and severally in the sum of Rs: 45,000/- with costs.

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D. Karunakaran

Judge

Dated this 29th day of July 2011