

IN THE SUPREME COURT OF SEYCHELLES

Karina Jean-Baptiste

(A minor herein represented by her

Mother **Lina Agricole** of Quincy Village, Mahé

Plaintiff

Vs

Michel Dogley

of Quincy Village, Mahé

Defendant

Civil Side No: 383 of 2006

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Mr. W. Lucas for the plaintiff

Mr. Lablache for the defendant

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D. Karunakaran, J.

JUDGMENT

This is an action in tort for damages. The plaintiff, a minor girl, aged 13 is seeking the Court for a judgment in the sum of Rs30, 200/- against the defendant for loss and damage, which she allegedly suffered from an injury resulting from a dog-bite. According to the plaintiff, the dog belonged to the defendant and he committed a fault, in that he, being its custodian failed to

secure the dog within his premises and unlawfully allowed it to stray on the public road. Consequently, the unleashed dog charged and bit the plaintiff who was at the material time, a pedestrian on the public road. As a result of the dog-bite, the plaintiff sustained a large lacerated wound on the posterior aspect of her right leg. Therefore, the plaintiff claims that the defendant is liable in law to compensate the plaintiff for the consequential loss and damage, which she sustained as follows:

a) For Injury	Rs 20,000. 00
b) For disfigurement with a permanent scar	Rs 5,000. 00
c) Moral damage	Rs 5,000. 00
d) Medical Report	Rs 200.00
Total	<u>Rs 30, 200.00</u>

On the other side, the defendant denies the entire claim of the plaintiff. According to the defendant, it is true that the plaintiff was bitten by a dog as alleged by her, but he was not the owner of the dog in question. Hence, the defendant contented that he was not at all responsible for the dog-bite and the resultant injury to the plaintiff. Therefore, he sought dismissal of this action.

The facts of the case as transpire from evidence are these:-

The plaintiff and the defendant are residents of Quincy Village, Mahé. The plaintiff is a secondary school student, whereas the defendant is a pickup driver by profession. The plaintiff's house is located about 300 meters from the

defendant's house. On the 14th January 2006, when the plaintiff was on the public road going to a shop, she was bitten by a dog, which was found near the entrance of the defendant's residence. The plaintiff testified that sometime she has seen that dog with other dogs inside the defendant's premises and some other times she has also seen that dog straying outside. In fact, the dog charged her and bit her on the posterior aspect of her left leg, causing a deep lacerated wound. She was immediately taken to English River Clinic for medical treatment. She obtained free medical treatment for the injury. Since the wound was large, she had to attend the clinic for dressing continuously for a couple of days. She also produced a medical report exhibit P1 referring to the injury and the treatment given. After two days, the wound was photographed and the photographs were also produced in evidence and marked as exhibit P2. The plaintiff admitted in cross-examination that the defendant's brother, who lives next to the defendant's house, also keeps many dogs, which are ferocious. Since the dog, which bit the plaintiff, was standing with another dog outside on the public road in front of the defendant's gate, she presumed that it belonged to the defendant. The plaintiff further testified that the defendant being their neighbor and as a family-friend, used to be very helpful and supportive. He had helped the plaintiff's family for the transportation of materials and at times had given lifts to the plaintiff's family members. Even, when plaintiff went to English River Clinic for dressing the dog-bite wound, the defendant was the one, who gave her a lift to the Clinic.

Ms. Lina Agricole - PW2- mother of the plaintiff, who was in fact, not present when the incident took place testified that after the dog-bite the defendant volunteered to give lift to the plaintiff in his pickup for her to go the Clinic for dressing the wound. Since the defendant was offering such help, she presumed that the defendant was doing so because he was the owner of the dog which bit the plaintiff. She further stated that the defendant also advised her to go and consult a lawyer, so that he would pay some compensation for the dog-bite. In the circumstances, the plaintiff's counsel contended that the dog which bit the

plaintiff belonged to the defendant and he failed to keep the dog secured within his premises. Therefore, he is liable to compensate the plaintiff for the said loss and damage, she sustained from the dog-bite.

On the other hand, the defendant testified in essence, that it is true that he keeps some dogs in his home/premises. But, the yard, where he keeps his dogs is well secured with a gate at the entrance, which always remains closed. There is no possibility of any of his dogs going out onto the public road on the day in question. Although he was not at home at the time of the alleged incident, later when he returned he learnt from others that the plaintiff was bitten by some dog. His maid one Ms. Sylvanne Lawen (DW2), who was working at his home that day also told him that she saw a on the public road that chased and bit the plaintiff. He also testified that the dog, which bit the plaintiff on that particular day, was one of the dogs of his brother, who lives on the adjoining property. Besides, he stated that he used to generally help people in the neighborhood, by offering lift in his pickup. He knew the plaintiff's family very well and on many occasions he has offered lift to the plaintiff and her mother. On a particular Sunday, as usual and as a good neighbor he offered lift to the plaintiff and her mother and dropped them at the English River Clinic. Also he stated that he never told the plaintiff's mother to go to a lawyer for consultation in order to get compensation from him. In the circumstances, the defendant denies liability in toto.

Ms. Sylvanne Lawen (DW2), the maid who was working in the house of the defendant at the material time testified that she witnessed the incident of the plaintiff being bitten by a dog. According to her it was not the defendant's dog which bit the plaintiff but that of his brother, who lives in the neighbourhood. The gate of the defendant's yard was closed at the time of the incident and all of his dogs were inside.

In view of all the above the defence counsel contended that the plaintiff has not

established the case against the defendant and so sought the dismissal of the suit.

Having sieved through the entire pleadings and evidence on record and having carefully analysed the submissions made by both counsel, to my mind, three questions, which arise for determination in this matter. They are:

- 1) *Was it the defendant's dog that bit the plaintiff in the alleged incident?*
- 2) *If yes, is the defendant being its custodian, liable in terms of Article 1385 of the Civil Code to compensate the plaintiff for the consequential loss and damages? and*
- 3) *If so, what is the quantum of damages, the plaintiff is entitled to?*

Obviously, the first question above is a question of fact. This does not involve any point of law. The answer to this question completely depends upon the credibility of the witnesses, their testimonies and the circumstantial evidence if any. In fact, there is no direct or circumstantial on record to show on the balance of probabilities that it was the defendant's dog, which involved in the alleged incident. The mere fact that at the material time, the dog was seen on the road near the gate of the defendant's house cannot lead to the only inference that it should have been the defendant's dog. According to the testimony of the eye witness, Ms. Sylvanne Lawen (DW2), the maid who was working in the house of the defendant at the material time, the defendant's gate was closed and all his dogs were secured inside. There is no evidence on record to show the contrary.

On the question of credibility, I believe the defendant and Ms. Sylvanne Lawen (DW2). I accept their evidence, when they testified that it was not the defendant's dog, which bit the plaintiff in the alleged

incident. I reject the testimony of the plaintiff on the identification of the dog. Her identification in this respect was based on guesswork and inference. The evidence given by Sylvanne Lawen (DW2) on this crucial issue is reliable, cogent and consistent with the sequence of events narrated by the plaintiff as to how and under what circumstances she was bitten by the dog.

After hearing the witnesses and examining the entire evidence in this matter, I find more than on a balance of probabilities that it was not the defendant's dog that bit the plaintiff in the alleged incident. Accordingly, I find the answer to the question no. 1 (supra) in the negative. Needless to say, the question no. 2 and 3 above, become irrelevant since the answer to question No. 1 has substantially and effectively disposed of the case, exonerating the defendant from any tortuous liability.

In the circumstances, I find that the plaintiff has failed to discharge her evidential burden to prove the material fact that it was the defendant's dog, which bit the plaintiff. Hence, the suit is dismissed with costs.

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D. Karunakaran

Judge

Dated this 18th day of February 2011