

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 383/2008

[2013] SCSC 70

MR. M
Plaintiff

versus

THE GOVERNMENT OF SEYCHELLES
First Defendant

THE HEALTH SERVICE AUTHORITY

Second Defendant

Heard: 17 October 2013
Counsel: Mr. Derjacques for plaintiff
Mr. Ananth for defendant
Delivered: 17 October 2013

JUDGMENT

Karunakaran J

[1] I believe I need not adjourn this action for judgment to another date. The facts are simple, straight forward and clear on record. Therefore, I proceed to deliver an extempore judgment in this matter.

- [2] The Plaintiff in this matter claims the total sum of Rs.1,000,000/- from both Defendants jointly and severally for loss and damage which the Plaintiff allegedly suffered as a result of a fault committed by the employee of the Defendants. In fact, the Plaintiff alleges medical negligence on the part of the employees of the Defendants namely, Medical Doctors who treated him for his chronic diabetic condition. The facts as transpired from evidence are these:-
- [3] The Plaintiff is a 47 year-old man inhabitant of Corgat Estate, Mont Fleuri. At all material times he was a patient of the first and second Defendants who have set up, administer and own the Victoria Hospital and the English River Health Clinic. In fact, the second Defendant, the Health Service Authority is a statutory body established and owned by the first Defendant, the Government of Seychelles, which operates and executes the health policies of the first Defendant at the Victoria Hospital and the English River Clinic. The Defendants are sued in their capacities as employers of the tort-feasor on vicarious liability.
- [4] During the year 2006 the Plaintiff was suffering from chronic diabetes and high blood pressure. He was medically treated by the servants of the Defendants at its various clinics in Mahe. In the year 2006 the Plaintiff underwent a urethral catheterization which developed into a periurethral abscess and further urethral necrosis. Subsequently, the medical officers tried to repair the said injury to his urethra by a graft which was not successful. In fact, the Plaintiff testified that on the 16th of July 2008 he underwent catheterization and as a result he sustained a hole under his urethra and he noticed that hole after a couple of days he underwent the surgery for the periurethral abscess and urethral necrosis. Since then the Plaintiff has a hole on his penis which still remains sore, painful and he is still using the same hole to urinate on daily basis.
- [5] According to the Plaintiff the present medical condition on his penis and his resulting impotency was caused due to medical negligence on the part of the doctors who treated his urethra during catheterization. Further, it is the case of the Plaintiff that he suffered permanent impotency because of the medical negligence on the part of the doctors. Therefore, he claims Rs.500,000/- for permanent impotency and Rs.300,000/- for

permanent pain and suffering and disfigurement and Rs.200,000/- for moral damages which make a total of Rs.1,000,000/- as damages. His wife also testified in support of the Plaintiff's case.

[6] On the other side, the Defendants did not call any evidence. However, they relied upon the medical evidence adduced by the Plaintiff himself in this matter. The Plaintiff's witness, Dr. Reginald, the consultant in charge from the neurology department testified that the Plaintiff is a well-known diabetic patient and he has been suffering from chronic diabetes and hyper tension for over 10 years. Due to those illnesses he is still on dialysis for renal failure. In 2006 after urethral catheterization he developed a periurethral abscess and very much that was attributable to his diabetes and hyper tension. Subsequently, the surgeon repaired his penis by a graft which due to infection was rejected, and again he is subsequently put on catheter. The doctor categorically testified that the Plaintiff's impotency has nothing to do with the catheterization done on the patient on the 16th of July 2006. Obviously, the doctor testified that the hole in the penis, impotency and other complications arose due to his diabetes and not from his urethral problem, or medical negligence by the doctor who treated him.. Diabetes, according to the doctor is a well-known disease notorious for associated infections and other problems of which impotency is a well-known result. According to his prognosis, because of his diabetic condition and renal failure and high blood pressure the Plaintiff has developed impotency which has been the cause of action in this matter.

[7] I carefully considered the evidence on record. I perused the report filed by the medical witness, Consultant Surgeon Reginald. Having given careful consideration to the entire facts, three questions arise for determination:-

(i) Was there any medical negligence on the part of the doctor who did catheterization on the 16th of July 2006 on the Plaintiff?;

(ii) Did the said catheterization cause the alleged impotency suffered by the Plaintiff?;
and

(iii) Has the Plaintiff proved the case to the required degree in civil matters?

[8] On the first question, I believe the Dr. Reginald in that the doctor who did catheterization on the 16th of July 2006 did not commit any fault, in that he did not perform the catheterization negligently, recklessly or in any manner attributable to recklessness or negligence on his part in the entire medical procedure. Regarding the second question, I do not find any evidence on record - not even one iota of evidence to suggest that the said catheterization has a causal link to the impotency the Plaintiff is suffering from. As regards to the third question, I find that the Plaintiff has miserably failed to establish even a *prima facie* case attributing liability to the Defendants.

[9] In the circumstances, I find that this plaint is not maintainable in law. Accordingly I dismiss the case. I make no orders as to cost.

Signed, dated and delivered at Ile du Port on

D Karunakaran
Judge of the Supreme Court