

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CS123/2014**

[2017] SCSC 85

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**JACKSON OTIENO**  
**Of Anse Aux Pins, Mahe**

**PLAINTIFF**

**VERSUS**

**SEYCHELLES PUBLIC TRANSPORT CORPORATION**  
**Of New Port, Victoria, Mahe**

**DEFENDANT**

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Heard: 14 December 2016  
Counsel: Mr Joel Camille for petitioner  
Mr Kieran Shah for respondent

Delivered: 6 February 2017

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**JUDGMENT**

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**McKee J**

[1] On 30<sup>th</sup> April 2013 the Plaintiff was a passenger in a bus belonging to the Defendant and driven by a servant and employee of the Defendant who was, at the material time, acting in the course of his employment. At Petit Paris, Mahe, the bus left the road, came to an abrupt halt in a ditch and as a result the Plaintiff sustained injuries. The Plaintiff averred that the accident was caused by the negligence of the driver of the vehicle and the Defendant was vicariously liable for the negligence of its servant and employee.

- [2] The Defendant admitted liability and hence the outstanding matter, on which the parties could not agree, was the quantum of damages appropriate in the circumstances of the case.
- [3] At a hearing on 24<sup>th</sup> October 2016 an agreed statement of facts and medical reports relating to the Plaintiff were submitted by consent. The Plaintiff gave short evidence in connection with the events on the day of the accident, the injuries sustained by him and his personal circumstances. Counsel for the Defendant was given the opportunity to cross-examine him.
- [4] Counsel for each party elected to finalise their cases by written Submission.
- [5] The Plaintiff gave evidence concerning his injuries and subsequent treatment. He sustained a broken left leg when the bus left the road, went into a deep ditch at the side of the road and partially overturned. He was detained in hospital for a period of some three weeks. He was operated upon, received remedial treatment and a bone graft with a metal plate inserted in his leg by screws to give added support and assist in his recovery. He was prescribed painkillers and had the use of crutches before and after his release from hospital. He used the crutches for a period of some three months and also received physiotherapy. He regularly attended the outpatients department at the hospital for follow up care. He was in pain for a period of some 2 years after the incident and, even now, complains of some residual pain.
- [6] The Plaintiff is 53 years of age, married with two children. He is a citizen of Kenya. He has been employed in Seychelles on contractual terms for a period of some fourteen years at a local technical college teaching motor vehicle mechanics. He was able to resume his employment after recovery from his injuries. He makes no claim for loss of wages. He complains of residual pain from his injury especially in cold weather.. He gives evidence that he has lost full flexibility in his left knee and this is an important factor since he has to actively participate in practical demonstrations of vehicle maintenance during his lecturing courses. He now has a limp and finds difficulty in lifting heavy weights or walking long distances.

[7] While he resumed his lecturing duties in Seychelles after his recovery, he is concerned about his ability to continue employment for the remainder of his working life. He is worried that further employment may be refused as he considers himself now, as he puts it, as a “limping man”.

[8] He has been advised that the plate in his leg may have to be replaced after a period of three to five years and is concerned about future medical expense for replacement surgery especially if he has, by then, returned to Kenya where there are no public and inexpensive medical services.

[9] FINDINGS.

[10] I have considered the evidence led before the court, the medical reports and the closing submissions.

[11] I find the Plaintiff to be a credible witness and that he has given a truthful account of his injuries, the immediate effect thereof and his worries concerning the future.

[12] He has computed the quantum of his claim under separate headings, namely,

1. pain and suffering.....Rs 200,000
2. anxiety, stress and depression.....Rs 200,000
3. Medical Report..... Rs 350
4. Future medical expenses..... Rs 200,000
5. Loss of amenities of life..... Rs 300,000

[13] I am satisfied on the balance of probabilities that the Plaintiff did receive injuries as a direct result of the negligence of the Defendant’s employee while the latter was driving the bus on the day in question.

[14] I find that the Plaintiff is entitled to a payment in respect of pain and suffering resulting from the accident and injury sustained. The Plaintiff included the sum of Rs 200,000 under this heading. The quantum of the award in this respect is to be considered.

- [15] A claim is submitted in respect of anxiety, stress and depression. I observed the demeanour of the Plaintiff as he delivered his evidence from the witness box. I found him to be a mature and sensible man, aged 53, who will be, understandably, concerned about future employment and his ability to care for his family. However, especially since he has now resumed employment, and having seen his demeanour, I have doubts as to whether he now suffers from anxiety, stress and depression. I consider that he has the personal character to deal with this setback and is doing so. Accordingly I would not consider an award under this heading.
- [16] I have no difficulty in making an award in respect of medical expenses incurred.
- [17] The Plaintiff sought an award for future medical expenses. He has referred to the prospect of his incurring future medical expenses on his return to Kenya when there is the strong possibility that further remedial work on his leg will be required. He explained that he had been advised that the metal plate inserted in his leg has a somewhat limited lifespan of some three to five years and that it may have to be replaced after he has returned to Kenya. His concern is that Kenya does not have a public medical scheme and further treatment could involve him in further personal expense. Counsel for the Defendant submitted, rightly, that no evidence had been produced as to the likely cost of future medical attention. The possibility of replacement of the plate is not mentioned in either medical report. However, in view of the age of the Plaintiff I am not willing to exclude the possibility that while in Kenya he may require further remedial surgery on his leg. This would inevitably involve him in further expense. I am prepared to consider an award under this heading.
- [18] The Plaintiff invites the Court to consider a payment under the heading of loss of amenities of life. He suggests that the sum of Rs 300,000 is appropriate. The medical report of 12<sup>th</sup> September 2013 stated that after surgery there was good alignment of the bone and an X-Ray was unremarkable. The Plaintiff was allowed to start weight bearing exercises although some mild swelling persisted. He stated that he did not have the same fluidity of movement as before which was a handicap while he performed the more physical aspects of his teaching. He had difficulty in walking long distances and felt that

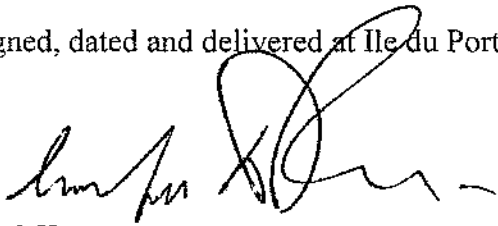
he was now limping while walking. In my view these conditions will improve with the passage of time and exercise but I am willing to consider this aspect of the claim.

[19] Counsel for the Defendant referred me to the case law. In my opinion the *Tucker* case has a strong similarity with the present case in which judgment was delivered some four years ago.

[20] The Plaintiff is entitled to an award of damages. In the light of my findings above I am satisfied that an award of Rs 180,000 is sufficient recompense for all injuries that the Plaintiff suffered and will continue to suffer from in the future together, with his medical costs up to today's date.

[21] THUS, I enter Judgment for the Plaintiff against the Defendant in the sum of One hundred and eighty thousand Rupees [Rs 180,000] and with costs.

Signed, dated and delivered at Ile du Port on 6 February 2017

A handwritten signature in black ink, appearing to read 'C McKee', written over a horizontal line.

C McKee  
**Judge of the Supreme Court**