

SUPREME COURT OF SEYCHELLES

Reportable
[2025]
CS94/2021

In the matter between:

NANDRANDRAINA FALISO RAKOTOASIMBOLA

1st Plaintiff

and

FITIP RAHAJARIVOKINELINA (A minor)
*(represented by her mother and guardian, Nandrandraina
Faliso Rakotoasimba)*

2nd Plaintiff

versus

EVAN JULES FRANCOIS SINON
(represented by Mr Frank Elizabeth)

Defendant

Neutral Citation: *Rakotoasimbola & Or v Sinon* CS94/2021 [2025] 03 March 2025

Before: Adeline, j

Summary: Action in delict arising out of road traffic accident – Strict liability regime applies – under Section 1383 (2) of the Civil Code of Seychelles Act liability strict liability is avoided upon proof on balance of probabilities that the Defendant was not at fault.

Heard: 2nd March 2023, 17th November 2023, 22nd November 2023 and 3rd December 2024

Delivered: 03 March 2025

ORDER

The plaint is dismissed with cost awarded to the Defendant

JUDGMENT

Adeline, j

Introduction

- [1] By way of a plaint entered in court on the 13th October 2021, the Plaintiffs, commenced legal proceedings against the Defendant claiming from the Defendant the total sum of SCR 1, 000, 000.00 following a tragic road traffic accident that occurred on the 7th May 2019 which caused the death of her spouse/husband, one Appolionaire, Adele Rahajarivoarinelina (“the deceased”).

Claim based on the pleadings

- [2] The basis for the claim based on the Plaintiffs’ pleadings is that on or about the 7th May 2017, at Mont Fleuri near the Botanical Garden, the Defendant while driving his motor vehicle S8060 in a “rash, negligent and dangerous manner” hit the deceased and caused his instant death.
- [3] The Plaintiffs claim that the Respondent having drove his motor vehicle S8060 negligently and dangerously without adhering to road traffic rules that consequently caused the death of the deceased, amounts to a “faute” in law the result of which the Defendant is liable to pay them moral damages.
- [4] In his statement of defence, the Defendant denies liability for the death of the 1st Plaintiffs’ deceased spouse/husband and went on as to say, that the deceased crossed the road negligently without paying care and attention to the traffic on the road, and prays this court to dismiss the plaint with costs.

The evidence

- [5] At the hearing of the evidence, the 1st Plaintiff testified, that she is an ex-employee of the Indian Ocean Tuna Company, IOT, where she worked for 12 years, and that she is married to one Appolinaire, Adele Rahajarivoarinelina, a Malagasy who is now dead. The 1st Plaintiff also testified, that she is the mother of a minor child, the 2nd Plaintiff, born of the marriage between her and the deceased.

- [6] It was the testimony of the 1st Plaintiff that her husband died in Seychelles on the 7th May 2017. At the time of her husband's death, he was in the employment of IOT as a line operator on a contract of employment.
- [7] The 1st Plaintiff testified, that she first heard of her husband's death in a message she received from a priest by the name of father Thierry who expressed his condolences to her and told her that her husband has died in a road traffic accident at around 4 am in the morning of the 7th May 2017.
- [8] The 1st Plaintiff's testimony as to the facts and circumstances of her husband's death, was that she only got to know of the circumstances of her husband's death after everything was explained to her by the Police as well as by a government Lawyer who was working on the criminal case following the accident.
- [9] The 1st Plaintiff testified, that she is making this financial claim on her own behalf and on behalf of her minor daughter against the Defendant as damages and compensation because the Defendant was responsible for the accident that caused her husband's death.
- [10] Another witness who testified at the hearing of the plaint was one Helda Doris, Michelle Port-Louis, the Human Resources Manager at IOT. Her testimony was basically intended to corroborate the testimony of the 1st Plaintiff as regards to the deceased employment at IOT. Mrs Port-Louis testified, that the 1st Plaintiff's husband had been working at IOT since 2010, and that at the time of his death, he had been in employment there for 23 years and was a Line Operator then earning a monthly salary of USD 475.
- [11] His last employment contract was to expire on the 29th October 2017, but was terminated on the 8th May 2017 because of his death which death IOT was notified of by way of a Police statement. On the same date, in a meeting with a CID officer named Inspector David Belle, IOT was informed by Inspector Belle that he was the Investigating Officer into the facts and circumstances of the accident and then gave IOT an account of Police investigation into the accident.
- [12] Another witness called to testify at the hearing of this plaint was one Dr Marcus Kurt Daniel Belle who works in the Anatomical Pathology Department of the Seychelles Hospital. Dr

Belle did tender in evidence as exhibit P5 a post-mortem examination of the body of the deceased prepared by one Dr Mina Bastista Sautos. Going through the content of the said report, Dr Belle stated, that upon examination multiple head injuries were found including fractures to the skull which caused injury to the brain leading to edema. Dr Belle explained, that edema is the swelling of the cells in the brain and that in the instant case, the injuries to the head caused the edema.

[13] Giving evidence in his own defence and on his own behalf, the Defendant, a 48 year old Refrigeration Technician of Au Cap, Mahe testified, that on the day of the incident on the 7th May 2017, he was driving a car from Au Cap heading to town in Victoria at a speed of 40 km/ph when just after passing by the main entrance of the Seychelles Hospital, and across the botanical garden main entrance on the left hand side of the road, he unexpectedly saw someone appearing suddenly in front of the car.

[14] As per the Defendant's testimony, as he applied the break to avoid hitting that person, he saw that person as he fell on the bonnet of the car and his head ended up on the car's windscreen causing it to break as the man ended up on the road in front of the car. The Respondent testified, that he waited for the Police to arrive and when they did, they took him to the Victoria Central Police Station where he undertook a breathalyser test which showed zero reading.

[15] It was the testimony of the Defendant, that he doesn't know where the man/victim came from, whether from the left hand side of the road or the right hand side of the road because he was looking ahead of him knowingly that there is no zebra crossing in this area and was not expecting anyone to suddenly appear in front of the car. The Defendant stated, that he was told by a female witness that the man/victim had crossed the road from the Ministry of Foreign Affairs building (Maison de Quinssy) (from the seaside of the road), and that she saw that facebook was live on the man's/victim's phone after the accident.

[16] It was the testimony of the Defendant, that he doesn't agree to pay the claim of SCR100,000.00 as claimed by the Plaintiff because he was not the one who caused the accident that caused the death of the man/victim. The Defendant added, that the accident happened solely because of the man's/victim's negligence by failing to observe whether there was

oncoming traffic on his left hand side before crossing the road especially at a place where there was zebra crossing. The Defendant testified, that this accident caused him to incur expenses, in that, he had to pay for the cost of repairs to the vehicle given that the vehicle was a rented car. The Defendant maintained, that the man/victim simply crossed the road without checking on the oncoming traffic from both sides of the two lane road. The Defendant asked the court to dismiss the Plaintiff's plaint with cost.

Submissions

- [17] The court did receive closing written submissions from learned counsel for the 1st and 2nd Plaintiffs. Learned counsel for the Defendant did not tender submissions in writing or otherwise. In his written submissions, learned counsel for the Plaintiffs begins by going through the parties pleadings identifying the averments that are admitted and denied. Learned counsel then proceeds to remind the court of the various pieces of exhibits tendered at the hearing of the evidence that seek to prove the Defendant's liability for the death of one Appolinaire Adele Rahajariroarinelina that happened in a road traffic accident on the 7th of May 2017.
- [18] Learned counsel proceeds to add, that whilst the Defendant denies liability, he admits that he has faced criminal charges following the accident. Learned counsel puts to the attention of this court the fact that although the Defendant says that he is not responsible for the accident, he has repeatedly said under cross examination that the deceased did cross the road.
- [19] In his submissions, learned counsel takes issue with the fact that the objections by learned counsel for the Defendant to questions put to the Defendant regarding the criminal case and its outcome, which objections were upheld by the court which said that the criminal conviction was not part of the pleadings. It is the contention of learned counsel for the Plaintiff, that the Defendant's conviction could not have been made part of the pleadings because the criminal trial had not even commenced at the time the plaint was filed in court. It is also the contention of learned counsel for the Plaintiff, that the court was wrong not to allow the question that was put to the Defendant which was whether he had been convicted of the criminal charge averred in the plaint.

- [20] Learned counsel submits, that the court should have allowed the question and that the conviction of the Defendant in the criminal case should have been made part of the evidence at the hearing of the plaint. Learned counsel cites several case law authorities which he submits support his proposition, notably, the case of Solo v Payet CS24/2014 SCSC 479. Learned counsel even argues, that the court should have taken judicial notice of the conviction and admit it in evidence.
- [21] In the remaining aspects of his submissions, learned counsel focuses on quantum by attempting to justify the financial award which the Plaintiff has pleaded for.
- [22] Of the various issues raised by learned counsel for the Plaintiff in his written submissions, one that is worthy of a short discussion is his proposition that the court should have admitted in evidence the conviction of the Defendant in the criminal case. Whilst under Section 29 of the Evidence Act such evidence is admissible “for the purpose of proving, where to do is relevant to any issue in the trial that that the person committed the offence”, in the instant case the conviction was not made part of the pleadings.
- [23] It is well settled law, that one cannot be allowed to tendered evidence to prove a fact that is not pleaded. In fact, it is on record in the proceedings of the 9th December 2021, learned counsel for the Plaintiff turned down a suggestion made by counsel for the Defendant (Mr France Bonte then) for this civil case to be put on halt until the criminal case is concluded. I must also add, that learned counsel’s suggestion that the court should have taken judicial notice of the conviction and consider it as part of the evidence in making its determination is without any legal basis, and indeed misconceived.
- [24] In the case of the estate of the late Andre Delhomme and others v The Attorney General (SCA 15 of 2020) [2023 SCC A 16 (26 April 2023)] the court of appeal substituted the order of the Supreme Court allowing the plea in limine litis for one dismissing the plea and remitting the matter back to the Supreme Court for hearing on the merits. The basis of the decision was that “the learned Judge was wrong to take judicial notice of the twenty-year extinctive prescription which had not been pleaded to, to dismiss the Appellant’s action in limine litis. Nonetheless, it is to be noted, that in this case the court relied on Articles 2223 and 2224 of the Civil Code of Seychelles Act that deal with prescription.

[25] In the case of Gallante vs Hoareau [1988] SLR 122, the Supreme Court at page 123, paragraph (g) had this to say;

“ [t] he functions of pleadings is to give fair notice of the case which has to be met and to define the issues on which the court will have to adjudicate in order to determine the matters in dispute between the parties. It is for this reason that Section 71 of the Seychelles Code of Civil Procedure requires a plaint to contain a plain and concise statement of the circumstances constituting the cause of action, and where and when it arose and the material facts which are necessary to sustain the action”.

In the case of Tirant & Anor vs Bannane [1977] 219, Wood j, made the following observation;

“ [i] n Civil litigation each party must plead all the facts on which he intends to rely, otherwise strictly speaking, he cannot give any evidence of them at trial. The whole purpose of pleadings is so that both parties and the court are made fully aware of all the issues between the parties. In this case, at no time did Mr Walsh ask leave to amend his pleadings, and his defence only raised the questions of Plaintiff's negligence”.

[26] The case of Boulle v Mohun [1933] M.R. 242 is another case on the very same point. On issue of contributory negligence which had not been pleaded in the statement of defence, the court found against the Defendant and went on as to say, that such issue could not, in any event, have been considered as it has not been raised in the pleadings.

[27] In the instant case, Plaintiffs' claim is grounded in delict under Section 1382 of the Civil Code of Seychelles Act. As such, proof of these three elements are required, namely;

1. Fault, 2. Damage and 3. a casual link between the two.

[28] As a general rule of procedural law, the Plaintiff in a civil suit or action has the burden of proof that goes with the evidential burden of proof. The standard of proof required in law is on the balance of probabilities. That is to say, proof on the balance of probabilities that the Plaintiff has suffered damage as a result of the Defendant's action (fault) (see Laporte

v/s Franchette [2013] SLR 593. In *Miller v Minister of Pensions* [1947] 2 All ER 372 Denning J had this to say;

“If the evidence is such that the tribunal can say we think it is more probable than not, the burden is discharged, but if the probabilities are equal, it is not. (see Page 374)”

- [29] In *Constance v Grandcourt* (unreported) 2016 SCSC 868, Twomey CJ (as she then was) explained, that under our laws, a victim of a road traffic accident has the choice of pursuing its claim under Sections 1382, 1383 or 1384 of the Civil Code of Seychelles Act. A close look at those statutory provisions, clearly indicates, that Section 1383 (2) provides specifically for motor vehicle accidents.

The provisions of Section 1383 (2) read;

“The driver of a motor vehicle which, by reason of its operation, causes damage to persons or property shall be presumed to be at fault and shall accordingly be liable, unless he can prove that the damage was solely due to the negligence of the injured party, or the act of a third party, an act of God external to the operation or functioning of the vehicle. Vehicle defects, or the breaking or failure of its parts, shall not be considered as cases of an act of God”.

- [30] In the case of *Brian Mathiot v/s Jason Camille and Others*, Civil Side CS64/2012 [2017] SCSC 1037, at paragraph [23], Twomey CJ (as she then was) had this to say;

*“I reiterate that a regime of strict liability operates under Article 1383 (2) in that the victim of the damage must allege and establish only the casual role of the chose (thing-here the bus) operated by the custodian by which the damage has occurred (see *Vel v/s Tirant*) [1978] SCR 7.*

- [31] In essence, the fact that under Section 1382 (2) of the Civil Code of Seychelles Act the Defendant is subject to strict liability as the custodian of the vehicle S8060 he operated at the time of the accident, the strict liability regime being rebuttable to avoid or escape liability, the Defendant had to tender evidence to rebut liability which is achievable if shown, that the fault may have been due to an extraneous occurrence. Effectively,

therefore, the burden of proof in this case shifted, to the Defendant to prove, on the balance of probabilities that the accident that caused the death of the man/victim (the deceased) happened as a result of an event outside its control.

Conclusion

[32] In the final analysis, therefore, having given due consideration to the evidence laid before this court now on the court's record, particularly, the explanation given by the Defendant as to how the accident happened, it is my considered opinion, that the Defendant has successfully discharged its burden of proof to escape the strict liability regime under Section 1383 (2) of the Civil Code of Seychelles Act. As a consequence thereof, this court dismisses the plaint against the Defendant with costs.

Signed, dated and delivered at Ile du Port on 03 March 2025.

