

SUPREME COURT OF SEYCHELLES

Reportable
CA 23/2023

In the matter between:

CHARLES PAULINE
Of
Perseverance, Mahe, Seychelles
(Represented by Mr Joshua Revera)

Appellant

And

JEAN-PAUL GUICHARD
(Self-represented)

Respondent

Neutral Citation: *Pauline vs Guichard* (CA 23/2023) (14 March 2025)

Before: Adeline J

Summary: Appeal to the Supreme Court against the judgment of the Magistrate's court.

Heard: Submissions

Delivered: 14th March 2025

FINAL ORDER

The decision of the Learned Magistrate attributing liability for the injuries sustained by the Respondent on the 4th December 2015 is upheld.

The award of damages to the Respondent in the sum of SCR 150,000 for pain and suffering as corporal damage is equally upheld.

The award of moral damage to the Respondent in the sum of SCR 30,000 is also upheld.

The award of SCR 350.00 as reimbursement for the expense made by the Respondent to obtain the medical report is also upheld.

The award for loss of earnings in the sum of SCR 14,000 representing two month's salary is quashed.

The total award of SCR 194,350 is substituted by the total award of SCR 180,350 with interest and cost.

JUDGMENT ON APPEAL

Adeline, J

INTRODUCTORY BACKGROUND

- [1] By Notice of Appeal dated 18th December 2023, filed in court on the same date, Charles Pauline of Perseverance, Mahe, Seychelles (“the Appellant”) who was the Defendant in the court aquo, commenced appeal proceedings in the Supreme Court appealing against the decision of his Worship, Senior Magistrate Vipin Mathew Benjamin (“the learned Magistrate”) in a judgment he delivered on the 4th December 2023 in Civil Side 27/2018.

SYNOPSIS OF THE FACTS

- [2] A synopsis of the history of this case that ended up before this court on appeal, shows, that the Respondent who was then the Plaintiff in the court aquo, entered a plaint against the Appellant who was then the Defendant, in which plaint he pleaded “faute” by the Appellant that caused the injuries he sustained to his face after the Appellant inflicted fist blows to his face during an altercation following a motor vehicle accident that happened on the 4th November 2015 at La Misere, Mahe when two motor vehicles, one driven by the Appellant, the other driven by the Respondent collided with each other.
- [3] As a consequence of the injuries to his face, the Respondent felt pain and suffering and incurred losses which were the subject of his claim for loss and damage against the Appellant in the total sum of Seychelles rupees three hundred thousand three hundred and fifty (SCR 350, 000) with interest and cost.

THE PLEADINGS

- [4] Inter alia, it is averred in the plaint, that the Respondent was an employee of Oceanic, a car rental company, and the Appellant a self-employed person. On the day of the collision between the two motor vehicles, the Respondent was seriously injured after the Appellant

inflicted fist blows on him causing multiple injuries to his face, arm and nose that he ended up at the casualty unit of the Victoria Hospital for medical treatment, and was later discharged on the same day. Thereafter, the Respondent had to attend to his follow up appointments that were on the 6th November 2015, 11th November 2015 and 2nd December 2015.

[5] It is also averred by the Respondent in his plaint, that the fist blows to his face, arm and nose amount to a “faute” in law rendering the Appellant liable towards the Respondent for loss and damage for the injuries caused to him as set out in the Medical Report dated 1st December 2015.

[6] In his statement of defence, the Appellant admitted that he did punch the Respondent in the face but denied the other averments in the plaint. It is averred by the Appellant, that he punched the Respondent as an act of self defence because the Respondent had attacked him. The court aquo, was satisfied, that on account of the evidence laid before it, that the Respondent had proved its claim against the Appellant on the balance of probabilities, and as a consequence, entered judgment in favour of the Respondent against the Appellant.

[7] In its Memorandum of Appeal filed on the 21st February 2024, the Appellant states the grounds of appeal to be the following;

- “1. The learned Magistrate erred in giving judgment o favour of the Respondent herein*
- 2. The learned Magistrate erred in law and facts in its award of damages to the Respondent*
- 3. The learned Magistrate erred in law by awarding separate damages for pain and suffering and moral damage*
- 4. The learned Magistrate erred in fact and in law, by awarding material damage due to an alleged incapacity to work contrary to the evidence showing that the Respondent was gainfully, employed during the said period”*

[8] In his attempt to have the appeal dismissed without consideration of its merits, the Respondent raised a preliminary objection contending that the memorandum of appeal was filed way beyond the prescribed limitation period of 14 days in breach of rule 11 of the

Appeal Rules, and the fact that the Appellant had not made an application for leave of the court to file its Memorandum of Appeal out of time. It was also the contention of the Respondent that the grounds of appeal upon which the Appellant pursues the appeal is defective and must be struck off given that they are vague and amount to no grounds of appeal for the purpose of rule 13 (3) of the Appeal Rules.

- [9] In a ruling of this court dated 29th July 2024, the preliminary objections to the purported appeal grounded on the proposition that the Memorandum of Appeal was filed out of time was overruled and dismissed, as was the proposition that the grounds of appeal are “vague and too general in terms”.

THE APPELLANT'S SUBMISSIONS ON THE GROUNDS OF APPEAL

GROUND 1: ERROR IN JUDGMENT IN FAVOUR OF THE RESPONDENT

- [10] It is the submission of learned counsel for the Appellant that the decision of the Magistrate was based on a misunderstanding of the facts and the law, given that the evidence led before the court at the hearing shows inconsistencies in the Respondent's account of events. It was also the submission of counsel, that the evidence of the Respondent was not corroborated by independent evidence, and yet, the learned Magistrate entered judgment in favour of the Respondent. Learned counsel opines, that this constitutes a serious error in fact finding, warranting the intervention of this court.

- [11] It is also the submission of learned counsel, that the learned Magistrate failed to apply proper judicial scrutiny of the evidence laid before the court to establish whether the Respondent had discharged its burden of proof, which in learned counsel's view the Respondent had not done so as required by law on the balance of probabilities.

- [12] Learned counsel submits, that the learned Magistrate failed to evaluate the evidence presented by Dr Roland Dedieu Gonzalez, who had stated, that in such cases there are active bleeding, but when he saw the patient there was no active bleeding although he did say that the patient was diagnosed with nasal bone fracture which was treated the same day by local anaesthetic, Dr Gonzalez having testified, that whilst such injury is considered a major injury, in this case, other than the fracture, everything was fine and the patient

recovered in less than a month. Learned counsel added, that Dr Gonzalez also confirmed, that he was unable to identify whether the injury came from a fist blow or the Respondent could have hit his face during the accident given that in both instances, the injury would be similar.

- [13] In its submission on this ground, the Respondent began by stating that this ground is vague and too general in terms and does not therefore disclose a reasonable ground of appeal.
- [14] On the merits of this ground of appeal, the Respondent submits, that the learned Magistrate had properly rehearsed the evidence laid before it in the thirteen page judgment. The Respondent also submits, that the evidence of witness Mervin Serret who was present at the time of the accident corroborated its evidence. It is submitted by the Respondent, that although Mr Serret did not witness the accident, he did witness the incident when the Appellant assaulted him at the time it happened.
- [15] The Respondent further submits, that Mr Serret's unchallenged evidence was clear as replicated at page 13 of the judgment, he having testified, that he (the Respondent) was not injured after the accident, that he was physically fine and did not in any way provoke the Appellant. The Respondent also refers to the evidence of Mr Serret, he having also stated, that the Appellant held him with his clothes, lift him up and put him down on the road and started punching him in the face, probably three times before he, the Respondent, managed to run away. The Respondent submits, that he was rescued by Mr Serret who then took him inside the car.
- [16] It is submitted by the Respondent, that Dr Gonzalez did diagnose its injuries, notably the nasal bone fracture, and started to treat it on the same day he reported to the hospital. The Respondent submits, that Dr Gonzalez applied nasal packing to control the bleeding since the nasal bone on the right side had turned black.
- [17] It is the finding of this court, considering the evidence on record, that the learned Magistrate did apply proper judicial scrutiny of the evidence led before the court without any error, and that as such its findings were correct. Therefore, on this ground of appeal, the appeal fails.

[18] A determination of this appeal on ground 1 essentially boils down, to whether the argument that, having regard to Section 1382 of the Civil Code of Seychelles Act, the learned Magistrate was wrong to conclude that base on the facts and circumstances of this case as led in evidence, the Appellant had committed a faute, and therefore, is liable for the faute that caused harm to the Respondent.

[19] For ease of reference, so far as is relevant, Section 1382 of the Civil Code of Seychelles Act is couched in the following terms;

“1. Every act whatever of man that caused damage to another obliges him whose fault occurs to repair it.

2. Fault is an error of conduct which would not have been committed by prudent person in the special circumstances in which the damage was caused. It may be the result of a positive act or an omission.

3. Fault may also consist of an act or an omission the dominant purpose of which is to cause harm to another, even if it appears to have been done in the exercise of a legitimate interest”.

[20] That being the legal definition of “fault” or “faute” which was established by the evidence led by the Respondent (the Plaintiff in the court aquo) it was incumbent on the Plaintiff to show that, there was a causal connection between the act of the Appellant and the damage alleged. The link must have existed at the time of the act. It was the determination of the learned Magistrate, at paragraph [54] of its judgment, that “in so far as the injury to the Plaintiff there is certainly a causal link as the facts pertaining to the incident was corroborated by Mervin and the injury by the doctor who treated the Plaintiff on the same day, and the testimony of Mervin, the doctor and that of the Appellant(Defendant then) who claimed that he assaulted the Plaintiff by way of self defence”.

[21] On application of the law as prescribed under Section 1382 of the Civil Code of Seychelles Act to the facts and circumstances of this case as led in evidence, I hold the view, that the learned Magistrate had rightly applied the principles required by Section 1382 of the Civil Code of Seychelles Act to reach its conclusion, having found that the witnesses who

testified for the Respondent were convincing and reliable witnesses to be believed. As such, this court upholds the decision of the learned Magistrate on liability having concluded, that the Appellant was liable for the injuries sustained by the Respondent in the incident that occurred on the 4th November 2015.

GROUND 2: ERROR IN AWARDING DAMAGE

- [22] In its attempt to justify its appeal on the proposition that the learned Magistrate committed an error in awarding the Respondent damages, learned counsel for the Appellant contends that, the award of damages to the Respondent by the learned Magistrate was factually and legally unsound. Learned counsel submits, that the quantum of damages awarded was excessive and not reflective of the evidence presented before the court, given that it is well established law that, damages should commensurate with the actual harm suffered. Learned counsel contends, that the damages awarded by the lower court was based on assumptions rather than facts supported by evidence.
- [23] The Appellant also submits, that the lower court misapplied the principles of compensation by failing to distinguish between actual damage suffered and speculative future loss, and that such failure led to an inflated award that does not reflect the true extent of the damage, if any, suffered by the Respondent.
- [24] It was the submission of learned Counsel that, case law regarding award of damages is instructive about the court's approach when considering damages to be awarded. It stated that in *Confiance v Allied Builders [1998] SLR 164*, it was held that the court has to maintain a certain amount of consistency in respect of particular types of injuries and at the same time be flexible when considering the circumstances and nature of the injuries in a particular case that demand a deviation from the general pattern.
- [25] In the light of that proposition, the Appellant invites the court to consider the cases which the Respondent relied upon in the court below, notably, *William and Anor v Abel and Anor [2021]* and *Labrosse v Boniface [2018]*. Learned Counsel submitted that, the similarity in these cases involve traffic accident, the differences are that the injuries the victim sustained

in William and Labrosse were extremely serious in nature involving surgery and hospitalization of the injured party.

[26] In contrast to this case, the injuries involved a nasal bone fracture which the same was treated the same day by local anaesthetic and the Respondent recovering in less than a month with no lasting effect. It is submitted by learned counsel, that consideration has to be taken that it was not clear what was the cause of the injuries, whether as a result of the accident or when the parties fought. It is the submission of learned counsel for the Appellant that, in cognizance of the injury sustained by the Respondent in contrast to the injuries to the injured party in the cases cited above, the quantum of damage awarded to the Respondent by the court below is manifestly excessive.

[27] In its submissions in response, the Respondent submits, that this ground of appeal is flawed and misleading. It states, that at page 3 and 4 of the learned Magistrate's judgment, it is clearly established that, he, ("the Respondent") had to return to hospital for follow ups and to remove the cast which was placed for two months for examinations and that it also underwent physiotherapy.

[28] The Respondent adds, that he was in a cast for two months. It refers the court to the photograph exhibited in evidence. It is submitted by the Respondent, that during that period, he had to attend hospital twice a week for check-ups, and to have the cotton in his nostrils removed. It is the submission of the Respondent, that he was on sick leave for the two months, and after the two months, he underwent four months physiotherapy and that he was still in pain after the four months.

[29] The Respondent also submits, that after the two months sick leave lapsed, he went back to work but was assigned to soft jobs. Furthermore, the Respondent adds, that he had difficulty to eat and that he was on liquid diet for two months. According to the Respondent's submissions, he was scared to walk along the street where the Indian temple is located in Victoria because of the real likelihood of coming across the Appellant who as a "pirat" taxi driver is stationed there during the day.

[30] The Respondent submits, that he had difficulty to wash his face and hair, to shower and that he eventually developed sinus. According to the Respondent's submission, he walked in fear and was traumatized. It is the submission of the Respondent that, the evidence he led before the court below were more than sufficient to constitute a sound foundation to award him the amount he received under the heads of loss and damages. The Respondent submits, that the financial award was fair in the circumstances of the case, and as such, this ground of appeal must be dismissed.

[31] It is worth noted, that it is a trite principle of law, that before an appellate court interferes with an award of damages, the court must be convinced, that the trial court acted on some wrong principles of law, or the sum awarded was so high or so small as to make it an entirely erroneous estimate of the damage to which the Plaintiff is entitled (see, for example, *Government of Seychelles vs Rose* SLR 2012, 365).

[32] Damages awarded by the court below in the instant case is for liability in an action in delict. Delictual liability is governed by Section 1382 (1) of the Civil Code of Seychelles Act. Therefore, since delictual responsibility has been established, compensatory damages are to be paid to compensate the Respondent for loss, injury or harm suffered. The court must therefore assess the amount of compensation attributable to the harmful acts of the Defendant. The learned Magistrate reviewed previous awards of damages and noted some that were somewhat comparable to the present case.

[33] He also considered inflation which requires continuous re-assessment of the awards. In assessing the amount for the injuries and moral damages to be awarded, the learned trial Magistrate clearly relied on the medical evidence of Dr Gonzalez that the injuries sustained by the Respondent were major because complications could occur from it. It is my considered opinion, therefore, that when all the elements and considerations are taken into account, the learned Magistrate's award of damages was not excessive and that the rationale for its assessment cannot be faulted.

GROUND 3: DOUBLE COMPENSATION FOR PAIN AND SUFFERING AND MORAL DAMAGE

- [34] It is the contention of learned counsel for the Appellant, that the separate awards for pain and suffering, and moral damage amounts to double recovery. Learned counsel submitted that in Seychelles jurisprudence, the assessment for damages for personal injuries, namely pain and suffering, can be physical or mental (see *Ventigadoo vs Republic* (2006-2007) SCAR 113. Hence, these heads of damages are typically treated as part of a single consolidated award for moral damage encompassing both, pain and suffering, as well as the emotional and psychological impact of the wrongful act. Learned counsel reminds this court, that in *Ventigadoo* (supra) D. Karunakaran J, had this to say;

“Legally speaking, “pain and suffering” aren’t two separate concepts. Instead, it is one compounded idea. awards for “pain and suffering” are not apportioned into separate amounts, one for “pain” and one for “suffering”. Pain and suffering is a phrase that is always used a single unit in legal terminology. Whilst there may be ... differences between “pain” and “suffering”, it is legally impossible to separate the two when trying to award damages. In most injuries, there will be physical and mental pain and suffering. Physical pain and suffering includes, bodily suffering or discomfort. Mental pain and suffering may include mental anguish or loss of enjoyment of life, in other words, amenities of life”

- [35] It is submitted by learned counsel for the Appellant that, the decision to award separate sum under both heads represents a departure from legal precedent and should be corrected by this court. In answer, the Respondent submits, that separate awards for pain, suffering and moral damage can be ordered by the court, and that has been the case in many past judgments.
- [36] It is this court’s view, referring to *Ventigadoo* (supra) that pain and suffering are not two separate concepts for consideration. However, physical pain and suffering, and mental pain and suffering are two separate concepts which have “pain and suffering” in common. The reason why Karunakaran J stated that there will be physical and mental pain and suffering. One includes bodily suffering or discomfort, and the other includes mental anguish or loss of enjoyment of life.
- [37] Therefore, it cannot be taken to be double recovery when you have separate awards for physical pain and suffering, and mental pain and suffering. As such, it is my considered

view, that the learned Magistrate did not attempt to separate pain from suffering, but did recognised pain and suffering as one concept that can take different forms. In the instant case, one form falls under physical pain and suffering, and the other, under mental pain and suffering.

- [38] It is obviously clear, at paragraph [64] of its judgment, that the learned Magistrate was referring to physical pain and suffering for which he granted an amount of SCR 150,000 and then at paragraph [66] he granted an amount of SCR 30,000 for moral and emotional damage.

GROUND 4: ERROR IN AWARDING MATERIAL DAMAGE FOR ALLEGED INCAPACITY TO WORK

- [39] It was the submission of learned counsel, that it is the law that, the principle of monetary compensation is available to a party that has sustained injuries resulting in loss and damage as a result of an act of the other party. (see *Elizabeth v Choppy* [1991] SLR 48. In cognizance of that principle, the Appellant submits that, the evidence before the lower court demonstrates that the Respondent was gainfully employed during the period for which he claimed incapacity to work. The Respondent had submitted, that during the said time he was employed by Oceanic Car Hire which is owned by Mr Nicole Chetty, whilst it is admitted that, because of the injuries suffered by the Respondent, he was given medical leave. Nonetheless, the Respondent tendered no evidence to prove that, whilst on leave, his salary was reduced, or he was not paid his salary at all.

- [40] In deciding the amount of damages to be awarded, the learned Magistrate did say, that in delict, as in tort, damages awarded must be compensatory, not punitive. That is to say, the Plaintiff should suffer no loss and at the same time make no profit. (see *Mambe v Pomeroy* [1970] SLR 54. The award of material damage for loss of earnings was in my learned counsel's view made in error as it contradicts the facts on record. It is submitted by learned counsel that the learned Magistrate failed to properly evaluate the evidence for this purpose, which led to an error.

[41] In answer, it is the submission of the Respondent, that this 4th ground of appeal is speculative, in view that was never challenged by the Appellant when he testified that he was on medical leave for two months and was being seen by the doctor twice a week.

[42] Looking at the plaint before the Court below, it is an undeniable fact, that loss of earnings was not a particularised claim. Yet, the lower court awarded the Respondent (the Plaintiff then) the sum of SCR 14,000 for loss of earnings, an award that was not pleaded by the Respondent. It is well settled law, that a party cannot be granted a relief outside its pleadings. When the court does so, it acts ultra petita. In *Rose v Civil Construction Company Ltd*, it was held, that the court cannot make an award of compensation which is outside the scope of the pleadings. Learned counsel for the Appellant, relying on *Vel vs Knowles SCA 41 of 1998*, argues, that a court cannot formulate a case for a party after listening to the evidence or grant a relief not sought for in the pleadings.

[43] Nevertheless, even if such claim was pleaded and the court heard the evidence that is on record, the Respondent tendered no proof that he was not earning a salary while on two months sick leave to which the learned Magistrate awarded two months' salary in the sum of SCR 14,000. For example, the Respondent failed to tender in evidence a copy of his sick leave note and other documentary proof. This aspect of the Respondent's testimony in cross examination through the exchanges that took place at the hearing is quite relevant and interesting;

“Q: Tell me Mr Guichard, when did you return on duty?”

A: I spent two months on medical leave after that two months from medical leave I resumed working. I cannot recall the date.

Q: You've also stated this morning that, yes you got according to you, two months sick leave. Did you get any sick leave note from the doctor?

A: Yes, I obtained one and I gave it to my work place.

Q: Do you have a copy for the court?

A: No.

Q: You mentioned this morning that still you did some work, some job. You said you got two months sick leave but did some jobs?

A: No.

MS DICK CONTINUES:

Q: Yes, this is what I wrote were stated. So, did you do any work whilst you were on sick leave?

A: No”.

[44] At this juncture, I am reminded of what was said in *Confait & Anor v Port Louis and Anor* (SCA 66 of 2018) [2021] SCCA 39 (13th August 2021) when the court stated the following;

“Be that as it may, awards of damages must not be speculative, but reasonably ascertained from the evidence adduced. This principle was emphasized by this court in the case of Monica Kilindo vs Sydney Morel & SPTC wherein it was stated, that “it is trite law that only reasonably ascertainable, as opposed to uncertain damages are permissible”.

[45] I agree, therefore, that the learned Magistrate erred in awarding material damage due to an alleged incapacity to work.

[46] In the final analysis, to wrap-up I have considered the proposition made in ground 1 and 2 of the Appellant’s grounds of appeal. In my considered view, these are not ground of appeal because they do not comply with the requirements of Rule 12 of the Appeal Rules. The purported grounds of appeal do not raise any point or points constituting an error or errors made by the learned Magistrate. The fact that the learned Magistrate gave judgment in favour of the Respondent does not in itself give rise to a ground of appeal for the purpose of this appeal. Equally, the fact that the learned Magistrate awarded damages to the Respondent does not give rise to a ground of appeal for the purpose of this appeal. Therefore, ground 1 and 2 of the Appellant’s grounds of appeal are dismissed.

[47] As regards to ground 3, the proposition is that the learned Magistrate erred in law by awarding separate damages for pain and suffering, and moral damage which in its submissions, learned counsel for the Appellant is of the view that, this is “double compensation for pain and suffering and moral damage”. The Respondent (the Plaintiff then) had claimed SCR 250,000 for the injuries sustained as a result of the Appellant’s (Defendant then) fist blows to its face. The learned Magistrate, on its finding that the Appellant was liable for the injuries sustained by the Respondent, to which I agree, awarded the Respondent SCR 150,000 which in my view was an award of corporal damage. That is to say, an award for the bodily injury sustained by the Respondent including physical pain and suffering.

[48] The Respondent had claimed moral damage in the sum of SCR 50,000. The learned Magistrate awarded it a single figure of SCR 30,000 to reflect the moral and/or psychological suffering, pain, trauma and anguish suffered by the Respondent. As a separate award, the learned Magistrate also made an award of SCR 350.00 to reimburse the Respondent the expense it made to obtain the medical report it needed to support its claim for corporal damage. Therefore, the proposition that the learned Magistrate has awarded the Respondent double compensation for pain and suffering and moral damage does not hold water, and I do not subscribe to this view. This ground of appeal is therefore dismissed too.

[49] Regarding the 4th ground of appeal, that is, the proposition that the learned Magistrate erred in fact and in law by awarding material damage due to alleged incapacity to work, it is the finding of this court, that the SCR 14,000 representing two months salary as loss of earnings awarded to the Respondent was an error because the Respondent did not plead such a claim in its pleadings, and even if it had pleaded, no evidence of proof of loss of earnings was adduced before the court. Therefore this ground of appeal succeeds.

[50] Therefore, the award of damages to the Respondent in the sum of SCR 150,000 for pain and suffering (corporal damage) is maintained, as is the award of moral damage and emotional damage in the sum of SCR 30,000.00.

- [51] The award for loss of earnings to the Respondent in the sum of SCR 14,000 representing two months pay is quashed for the reasons given above.
- [52] Therefore, on quantum, the award of SCR 194,350 to the Respondent is substituted by the total award SCR 180,350 with interest and cost in favour of the Respondent.

Signed, dated and delivered at Ile du Port 14th March 2025.

