

IN THE SUPREME COURT OF SEYCHELLES

MAGALIE ERNESTA

PLAINTIFF

VERSUS

1. DANNY JAMES

2. SIDNEY BAMBOCHE

3. S.P.T.C

(Rep by its Managing Director Mr Daniel Gappy)

DEFENDANT

Civil Side No 8 of 2004

Mr. P. Boulle for the plaintiff
Mr. K.Shah for the defendants

JUDGMENT

Perera J

This is a delictual action in which the plaintiff claims damages in respect of personal injuries suffered in a road traffic accident. Admittedly, on 4th March 2003, the plaintiff was a passenger in a bus owned by The Seychelles Public Transport Corporation (*S.P.T.C*) bearing no. S. 13193, driven by the 1st defendant. It is also averred that another bus owned by the S.P.T.C driven by the 2nd defendant collided with it thus causing the accident. The S.P.T.C, as the 3rd defendant is being sued in a vicarious capacity as the owner of the two buses, and the employer of the 1st and 2nd defendants.

The defendants have admitted liability, but contest the quantum of the claim for damages.

The plaintiff was 18 years old at the time of the accident. She was seated in the bus behind the driver's seat during the collision and fractured her nose. There was bleeding, and at the hospital a tear on the nostril was sutured and the nose was plugged with cotton pad. She was warded in hospital for

about one week during which time a Surgical operation was performed on the fractured nasal bone.

The plaintiff in her testimony stated that she could not sleep properly due to the pain and also that she had to breathe through her mouth for about two days. She stated that she still had difficulty in breathing, followed by headaches from time to time. The Court was shown a slight swelling on the right side nostril. The plaintiff stated that this deformity is causing her embarrassment.

Dr. Wix Cupidon, the Maxillo - Facial Surgeon of the Victoria hospital, corroborated the plaintiff as regards the injuries. According to him, there was a laceration of the right side of the nose from the root to the alna, of approximately 5 cm in length causing a deformity of the nasal frame. There was also a fracture of the nasal bone. The laceration was sutured, and plaster of Paris was applied. In his report (*exhibit P2*), Dr. Cupidon certified that the plaintiff has a permanent cosmetic disability due to the scar on her right side of the nose.

The plaintiff also produced the medical report from Dr. Gowthaman, the E.N.T Surgeon who treated the plaintiff. He sutured the laceration and later an operation was performed to set the fractured nasal bones and Plaster of Paris was applied. He certified that the plaintiff underwent two surgical procedures. He has further certified that she had a temporary disability to the shape of the nose for seven days, but suffers a permanent disability due to the scar on her right side of the nose.

The plaintiff claims -

- | | | |
|-----|--|------------------|
| (1) | <i>Moral damages for pain, suffering, discomfort and anxiety</i> | <i>Rs.</i> |
| | <i>50,000</i> | |
| (2) | <i>Disfigurement</i> | <i>Rs 25,000</i> |

(3) *Permanent disability*

Rs. 25,000

Rs.100.000

In the case of **Terence Dingwall v. Royce Dick & S.P.T.C. (C.S. 207 of 1995)**, the plaintiff suffered nasal injuries consequent to an S.P.T.C bus colliding with his motor car. He had the following injuries-

1. *1 cm long scar on the floor of the left nasal vestibule, which was slightly inflamed.*
2. *The collumella and the tip of the nasal cartilages - marginally deviated to the right side*
3. *No external deformity to the nasal framework*
4. *Large nasal vestibule contracted.*
5. *Left alna nasi getting attached to the floor of the left vestibule.*

He was medically advised that the inflammation of the inferior turbunates could be reduced by cauterization, but he declined as two previous surgical interventions did not give him much relief. He claimed Rs.80,000 for pain and suffering and Rs.120,000 for loss of amenities and for permanent deformity. I awarded a sum of Rs.15,000 for pain and suffering and Rs.30,000 for the deformity. The Court of Appeal in (*S.C.A. no. 40 of 1996*) did not interfere with that award, although the award made for the damaged vehicle was set aside.

Those awards were made ten years ago, and hence in the present case, they should be correspondingly revised. The plaintiff in this case is a young lady carrying a permanent cosmetic injury on the right side of the nose. There is also a slight crookedness in the shape of her nose. Hence on the basis of the **Dingwall case** (*supra*) I award a global sum of Rs35,000 for the disfigurement, and the permanent cosmetic disability. As regards the claim for pain and suffering, I award a sum of Rs.25,000.

Accordingly, judgment is entered in favour of the plaintiff in a total sum of Rs.60,000 together with interest and costs.

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A.R.PERERA

JUDGE

Dated this 24th day of June 2005