THE SUPREME COURT OF SEYCHELLES

Silver Sands (Pty) Ltd
Rep. by Bernard Port-Louis of
Baie Lazare, Mahé ***Plaintiff***

v/s

Georgette Pool of
Plantation Club, Bale Lazare, Mahé ***Defendant***

Civil Side No. 306 of 1999

Mr. A. Juliette for the plaintiff

Mr. P. Boullé for the defendant

D. Karunakaran, J.

JUDGMENT

In this action, the plaintiff, a car hire-company claims the sum of R *57,* 094/- from the defendant for loss and damage, which the plaintiff suffered due to an alleged breach of a contract of hire by the defendant. The defendant denied liability and disputed the entire claim of the plaintiff.

The facts of the case are these:-

At all material times the plaintiff was engaged in the business of car hirer and owned a four-year old car - make Subaru - registration number *S6158* hereinafter referred to as the *"Subaru"* among its fleet of motor vehicles used in the business. The defendant was, at all material times an employee of the Hotel Plantation Club and a customer of the plaintiff.

By an agreement dated 3 November 1998 - exhibit P1 - the defendant rented the said "Subaru" from the plaintiff on a long-term basis. It was an express term of the

said agreement that the defendant would take proper care of the vehicle during the period of hire.

According to the plaintiff, the defendant failed and neglected to take proper care of the said vehicle and was in breach of the terms of the said contract of hire. The particulars of the breach as pleaded in the plaint are these:

(a) *On the 21st November 1999 the said vehicle S 6158, driven by the defendant, collided against another vehicle, registration number S1803 at Au Cap, Mahé;*

(b) *The defendant failed to stop, slow down, steer or otherwise control her vehicle so as to avoid colliding with the other vehicle S1803*

(c) *the defendant drove too fast in all the circumstances;*

(d) *failed to pay any or any sufficient attention to other road users; and*

(e) failed to drive with reasonable care and skill required in the circumstances.

Mr. Bernard Port-Louis (PW1), a director of the plaintiff-company testified in essence, that although the normal rental of the said car was R400/- per day, the plaintiff reduced the rental to Rs300/- per day as a concession, since the defendant hired it on a long-term basis. Mr. Port-Louis further stated that when the customers normally hire motor vehicles from the company, they pay Rs 50/- per day over and above the daily rentals in order to cover the insurance, though it is optional. However, in the case of the defendant, she opted not to pay for the insurance cover and impliedly took the risk on her own. Further, he testified that when the vehicle had been hired out to the defendant, it was in a good working order including the condition of the brakes.

On 28 November 1999, the defendant while driving the said Subaru admittedly, collided with another moving pickup, as she was following that pickup from behind.

Because of the collision, the front part of her car, the Subaru sustained extensive damages. The defendant testified in this respect - in her own words - thus:

> *"On that day it was Miss World Contest, I was working at the Plantation Club Hotel as Human Resources Manager. I was driving down to go home and change in order to go later for the event. I was driving at a normal speed when I reached La Plaine they call it next to where Mr. Marchesseau used make the small model boats. There was a pickup in front of me and the distance was quite far and suddenly, the pickup braked, I braked as well. My brakes failed, the car slipped, and I went and hit behind the pickup. The driver of the pickup came out. The pickup number was S1803. The driver came out and told me that he had to brake spontaneously because a dog crossed before him. Coming from nowhere, he saw this dog crossed before him. Although I tried to apply my brakes that did not take; it did not work. This is how I hit behind the pickup"*

Soon after the accident, the plaintiff gave another vehicle to the defendant as replacement. The damaged "Subaru" was then taken to the garage of a mechanic by name Camille Mondon of Baie Lazare for repairs. The mechanic invoiced the plaintiff for the work done including labor and material. According to Mr. Port-Louis, the invoice amount was in the total sum of Rs. 13,094/- vide exhibit P2, and the repair works took about nine weeks for completion. Therefore, he claims "loss of earning from rentals" at the rate of Rs400/- from the defendant for the said nine weeks.

According to the plaintiff because of the matters aforesaid, it has suffered loss and damage as particularized below:-

Cost of Repairs

Materials and spare parts	SR 8, 994.00
Paint and Labor	SR 4, 100. 00

Loss of Use	
@SR400 Per day x 60 days	SR 24, 000.00
Moral Damage:	SR 20, 000.00
TOTAL	**SR 57,094.00.**

In the circumstances, the plaintiff prays this Court for a judgment in its favour in the sum of SR *57,* 094/- plus interest and costs.

On the other hand, the defendant denies liability although, she has admitted in her defence that she had rented the *Subaru* from the plaintiff and got involved in an accident that resulted in damages to the front part of that car. Besides, she claims that she took proper care of the said vehicle at the material time but the collision occurred because of the brake-failure of the "Subaru".

According to the defendant, the brake in the *"Subaru"* was working well before the accident. However, there was a sudden manifestation of some mechanical defect in the brake system that led to the accident. She further stated that even though she tried to apply the handbrake in her car, she could not succeed, as that break was also out of order.

In support of her defence, the defendant called three witnesses to establish that the plaintiff on 1 April 1999 sold the damaged "Subaru" to another mechanic Mr. Leon Mondon (DW4), a brother of the said Camille Mondon, by changing its number plate. Mr. Leon Mondon, after carrying out some repairs to the said vehicle, on 19 August 1999 sold the same to one Ms. Pascalina Zelia (DW2). An official from the Seychelles Licensing Authority (SLA) Ms. Contoret (DW3) also testified to the effect that a white Subaru Engine 330963, Chassis JFIKD5RROCB012723 year of manufacture 1993 was first registered on 3rd

December 1993 as S5089 in the name of the plaintiff. This vehicle was reregistered on the 1st April 1999 as S6158. Likewise, another vehicle Engine 332300, Chassis JFIKD5PROCB012735 year of manufacture 1993, was first registered on 3rd December 1993 as S6158 in the name of the plaintiff. This vehicle was also reregistered on 1 April 1999 as S3258. In the circumstances, the defendant contented that the plaintiff had two cars, namely, the Subaru hired by the defendant and another one in his fleet; both cars were involved in two different road traffic accidents and were damaged during the same period. The plaintiff changed the number plate of the said "Subaru" to the other damaged car and the plaintiff failed to give any valid reason for such change. According to the defendant, the plaintiff could not recover damages from the person who caused damage to the other car, and which damage was heavier than that of the "Subaru". Hence, he changed the number plates so that the more extensive and heavier accident could be charged on the defendant. In the circumstances, the defendant urged the Court to dismiss the action.

I meticulously perused the evidence on record and the documents adduced by the parties. Firstly, I note, it is not in dispute that the plaintiff hired the car; it is also not in dispute that it got involved in an accident and sustained damages in the front whilst in her possession and control, during the period of hire. Obviously, it is very evident from the contract of hire in exhibit P1, that there was an express term stipulating that the Defendant would take proper care of the vehicle. Having gone through the pleadings and evidence, I find the following questions arise for determination:

(i) *Did the defendant take proper care of the car she had hired from the plaintiff, and return it reasonably, in the same order and condition?*

(ii) *If not, is the defendant liable to compensate the plaintiff for the consequential loss and damage?*

(iii) *If so, what is the reasonable sum the plaintiff entitled to recover from the defendant?*

Before finding answers to these questions, it is important to examine one of the main limbs of the defence, which the defendant has raised regarding the change of number plates and registration numbers of the cars. As I see it, this line of defence taken by the defendant implies "fraud" on the part of the plaintiff designed to inflate and exaggerate the damage. Obviously, the defendant introduced this material aspect of her defence only in the evidence; it is nowhere pleaded in the statement of defence. There is not even a faint word of reference or any indication therein to that effect. It is a trite law, in civil litigation each party must state his whole case and plead all material facts on which he intends to rely. Our system of civil justice does not permit the Court to formulate a case for a party after listening to the evidence and to grant relief based on facts not supported by pleadings ***vide Tirant vs. Banane SLR (1977) Charlie vs. Francois SCAR (1995).*** In the absence of any pleadings in the statement of defence, I find that the defence based on ***change of number plates*** is not tenable in law. In any event, it is evident that the alleged change of number plates, deregistration or re-registration with SLA has taken place nearly six months after the date of the accident and the alleged damages to the "Subaru". Besides, as I see it, the "***change of number*** **plates"** or **"deregistration"** will not alter the liability if any, on the part of the defendant for the alleged breach of contract as much as this change has nothing to do with the actual loss and damages, the plaintiff suffered as a result of the breach of contract. Therefore, I completely reject the evidence adduced by the defendant in respect of this line of defence.

I will now turn to find answers to the questions formulated above. As regards the first question, it is evident that the defendant had been using the car for more than three weeks prior to the accident without any defect in the brake system. In fact, she had been driving the car from Anse La Mouche to Anse Royale immediately before the collision. She stated that it was a sudden manifestation of a brake failure. She was travelling at a sped of 60-65 km per hour. The brake according to her did not work. The hand brake also failed. In the same breath, she stated that her car slipped went ahead and hit against the pickup, which was about 30 meters ahead. Upon evidence, having regard to all the circumstances surrounding this accident, I find on

a preponderance of probabilities that the defendant was at fault having failed to take necessary care and control of the car at the material time, and contributed to its collision with the pickup and eventual damages to the car. In any event, I do not believe the defendant's version attributing break failure as root cause of the accident. Therefore, I conclude that the defendant did not take proper care of the car she hired from the plaintiff, and failed to return it reasonably, in the same order and condition in which she received it from the plaintiff. Obviously, the defendant was thus, in breach of her obligation under the contract of hire, which stipulated that she should take proper care of the car during the period of hire. Besides, the defendant is also under a statutory obligation in terms of Article 1728 of the Civil Code "to use reasonable care of the thing under hire". In my judgment, the defendant failed to use such reasonable care of the car under hire. Hence, I hold the defendant liable to compensate the plaintiff for all the consequential loss and damage, it suffered.

On the question of loss and damages, I believe the plaintiff in that, he paid a total sum of R13, 094/- towards the cost of repairs to the vehicle hired by the defendant that sustained damages in the accident. Accordingly, I award this sum to the plaintiff. As regards loss of use, I find the claim of the plaintiff is exorbitant and exaggerated. The plaintiff has claimed rent at the rate of Rs 400/- per day for 60 days. In fact, in the instant case, the plaintiff had rented the car only at the rate of RS300/- per day, to the defendant. Moreover, I note that there is no guarantee that the car would be on hire seven days a week or 30 days in a month. In the circumstances, it is fair and reasonable to award loss of use at the rate of Rs300/- per day only for 30 days, which sum amounts to Rs 9,000/- Having regard to all the circumstances of this case, I award plaintiff a sum of Rs5000/for moral damages.

In the final analysis, I enter judgment for the plaintiff in the total sum of Rs28, 094/- with costs.

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D. Karunakaran

Judge

Dated this 5th day of December 2007