

IN THE SUPREME COURT OF SEYCHELLES

DAVIS DODIN

PLAINTIFF

VERSUS

1. MICKEY BARBIER

2. PIERRE ADELAIDE

3. GOVERNMENT OF SEYCHELLES

(Rep by the Attorney General)

DEFENDANTS

Civil Side No 222 of 2005

Miss Pool standing on behalf of

Mrs Antao for the Plaintiff

Mr. E. Chetty for the Defendants (Present)

JUDGMENT

Perera J

The plaintiff sues the 1st and 2nd defendants who are members of the Police Force, and the 3rd defendant, the government of Seychelles in its vicarious capacity, for damages arising from personal injuries caused to him and for an alleged unlawful detention for 11 days. The defendants, who were duly served with notice of action defaulted appearance on 18th October 2005, and consequently on the application of Learned Counsel for the plaintiff, the case was fixed for *exparte* hearing on 1st February 2006. The defendants were informed of the date of the *exparte hearing*. However, as there was default of appearance once again, the Court proceeded to hear evidence adduced by the plaintiff.

The plaintiff testified that on 6th January 2005 at around 10 a.m. he was seated in an old house at English River, when the 1st and 2nd defendants shot at the house without asking him and others with him what they were doing. Consequently he was shot in the knee. He stated that while he was warded in hospital for 5 days, he was guarded by Police Officers. Later, on being discharged he was detained at the Police Station for 6 days. He further stated that he was not charged for committing any offence, and that hence his detention for 11 days was illegal.

Dr. Vijay Kumar Gupta produced a medical report (P1). According to this report, the plaintiff was admitted to the Casualty Unit on 6th January 2005 with a gun shot injury on his right knee. There was an entry and exit wound of 1 cm. The bullet was not embedded, and there was no fracture. He was admitted to the D'offay Ward, and the wound was explored and treated in the Operating Theatre. He was discharged on 13th January 2005.

Questioned by Counsel for the plaintiff the doctor stated-

“Q. Did you notice if there were any Police Officers who accompanied him?

A. Yes, I remember, he was a prisoner”.

As regards the claim for pain and suffering, hospitalization and surgery, the claim for Rs.150,000 is exaggerated. In the case of Kirt Telemaque v. Jean Vardin and Government of Seychelles (C.S. 332 of 1999) for a similar entry and exit bullet wound, this Court

awarded a sum of R.45,000 for pain and suffering. In that case, an x' ray of the femur showed bone splinters in the soft tissue with an apparent fracture in the lower end of femur, above the femoral condyles.

In the present case however, according to the medical report, there were no fractures. Hence I awarded a sum of Rs.30,000 to the plaintiff under that head.

The plaintiff also claims Rs.1,320,000 for 11 days illegal detention at the rate of Rs5000 per hour. The evidence discloses that the plaintiff was under Police detention, on suspicion for committing an unlawful offence. Hence even if he was guarded by a Police sentry in hospital from 6th January 2005 to 13th January 2005, hospitalization was primarily for necessary medical treatment. The placing of a sentry in such circumstances could not be considered as "illegal detention".

In the absence of evidence to the contrary, the Court accepts that the plaintiff was detained in custody at the Police Station for 4 days upon being discharged from hospital. Learned Counsel for the plaintiff relied heavily on the case of Eric Derjacques v. Commissioner of Police (SCA no 17 of 1995). In that case, the Supreme Court (Bwana J) dismissed the claim of the plaintiff for illegal detention for 26 hours. The Court of Appeal held that the detention became illegal after the lapse of 24 hours. That Court held inter alia that -

“The Appellate Courts are loathe to upset the findings of fact of trial judges. However, in the present case, there are many disturbing features and we feel constrained to reverse the findings of the trial judge. The appeal is allowed, and we assess the damages at Rs.10,000”.

There is no specific quantification of that award on the basis of Rs5000 per hour. In the case of Cesar Marie v. Attorney General (C.S. 424 of 1998) the plaintiff was illegally detained for 1 hour. I awarded him Rs.15,000 as damages, taking all other circumstances into consideration.

In the case of Gerard Canaya v. Government of Seychelles (CS. 42 of 1999), the Court awarded Rs.5000/- for illegal detention for 18 hours.

More recently in the case of Giovanni Marimba v. Superintendent of Prisons (C.S. 21 of 2004), decided on 16h July 2007, the plaintiff inter alia claimed Rs.75,000 for illegal detention for 75 hours at the rate of Rs1000/- per hour. Learned Counsel in that case relied on the awards in Eric Derjacques (supra) and Cesar Marie (supra) as authority for awarding damages by the hour. In that case, I held that the Court does not act on any tabulated scale of compensation, but on facts and circumstances of each case. I also held that the claim for moral damages based on Rs1000 per hours for 75 hours was contrary to delictual principles. On the basis of these findings, I award a sum of Rs.20,000 for the illegal detention for 4 days.

Accordingly, judgment is entered in favour of the plaintiff in a total sum of Rs.50,000, together with interest and costs.

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A.R. PERERA

JUDGE

Dated this 28th day of September 2007