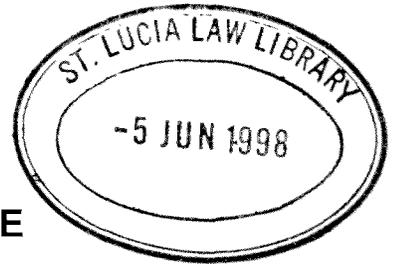


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(3) Damages

SAINT LUCIA



**IN THE HIGH COURT OF JUSTICE
(Civil)
A.D. 1998**

SUIT NO: 364 of 1992

Between:

LENORA SOOKWA

PLAINTIFF

AND

- (1) ELEANOR CASIMIR**
- (2) HUGH SEALY**

DEFENDANTS

 1997: APRIL 28
 1998: JANUARY 29
 MAY 26

Appearances:

Mr. E. Calderon for the Plaintiff
Mr. A. Richelieu for the Defendants

JUDGMENT

d'Auvergne J.

The Plaintiff filed a claim against the two Defendants for general damages, special damages in the sum of Eight Thousand Two Hundred and Sixty-Eight Dollars and Sixty-Five Cents (\$8,268.65), interest and costs. The Plaintiff alleged that on the 27th day of July, 1990 at about 8:40 a.m. the second Defendant drove motor bus HA3475 along the Gros-Islet Highway in particular near the Sunny Acres gap with such speed that he collided with her and caused her to suffer much injury, pain and suffering.

At the trial the Plaintiff gave evidence on her own behalf along with three other witnesses whereas the two Defendants alone gave evidence for the defence.

Lenora Sookwa told the court that on the day in question she travelled along with her brother as passengers on a public transport; that at the Sunny Acres gap the driver stopped the vehicle, she paid the driver and alighted from the vehicle.

The Plaintiff told the court that she walked along the stationary vehicle that she had alighted from "looked left and right, left and right again; there was no vehicle approaching so I hurried to cross the road to the other side, after that I know nothing. The next time I knew where I was on the Saturday . . . I saw students at the foot of my bed at the Victoria Hospital."

She told the court that she suffered much pain especially from the right side of her pelvic girdle and the right thigh bone; that she "had a problem with hearing, especially with the right ear" and that she had lost her "sense of smell even today."

She told the court that during her eighteen (18) day stay at the Victoria Hospital she was attended to by Dr. Richardson St. Rose, Dr. Andrew Richardson and Dr. Saltibus; that after her discharge from the hospital she was unable to walk and could only eat certain foods; that during this period which lasted for about three (3) months she was cared for by her mother.

She said that she still suffered from giddiness and pelvic pain, that she still encountered problems with her hearing and had to apply pressure against the right ear in order to hear. That her right leg was now shorter and that she "cannot stand on both feet at a time."

She said that on the date of the accident she was in her nineteenth (19th) year and an avid sports person who played cricket and volley ball for her school team.

Under cross-examination she was questioned about the trial of the traffic offence at the Magistrate's Court arising out of this incident, she admitted to giving evidence but denied ever giving evidence of running across the road and neither looking right nor left. She said that when she looked right she could see a distance of fifty feet (50ft.) and that she "had passed half the road when ... could not recall anything." She further said that after she was discharged from hospital she made visits to Dr. St. Rose and paid him.

Dr. Richardson St. Rose an Orthopaedic Surgeon told the court that on the 27th day of July, 1990 he examined the Plaintiff and found the following:-

- "(1) Multiple abrasions over both knees and legs.
- (2) Six (6) inch laceration over the right elbow region.
- (3) Fracture of the right temporal and occipital bones expanding to the base of the skull.
- (4) Fractures of the right ischium and pubis ramus.
- (5) Slight displacement of pelvis.
- (6) Cerebral concussion.
- (7) Severe headaches, giddiness and pelvic pains.
- (8) Permanent loss of her sense of smell.
- (9) Partial loss of hearing in right ear. Temporary disability of forty percent (40%). Permanent disability of eight percent (8%).

He further said that after his last examination of the Plaintiff he concluded that "there will be a permanent disability of about thirty percent (30%)."

Under cross-examination this witness told the court that any damage sustained by the nerves in the base of the skull remains permanent and can never be rejuvenated.

David Sookwa, a Bank Clerk at the National Commercial Bank of St. Lucia said that on the day in question he travelled with his sister, the Plaintiff on board a public transport from Forestierre to Sunny Acres gap; that she alighted from the vehicle paid the driver and then he saw her starting to cross the road while he was waiting for his change from the driver. He said "I moved to my left and when I looked I actually saw the van (my sister was more than half way crossing) which knocked my sister. The van's number was HA3475. After knocking her I heard the crashing of the brakes . . . He did not stop he kept on going, he kept on meandering so as not to go over her. Finally I saw the vehicle on a diagonal position rolling my sister on the pitch. After that the van stopped and I ran to my sister."

He gave a graphic description of the way in which he saw her after the accident, in particular that her clothes were in disarray, blood flowing profusely from her nose, right ear and from a cut on one of her arms; that at the scene, a volunteer went with him and his sister into a hired vehicle to the Victoria Hospital, that his sister appeared to him to be unconscious since she never spoke.

He concluded his evidence in chief by stating that his sister complained frequently of headaches and pain in the hips and was unable to take part in the games (such as cricket and volley ball) that she previously played with him. He emphatically stated that after the accident his sister laid on the "left to right side going up to Gros-Islet on the pitch near the grass verge."

Under cross-examination he said that "I did not see if my sister first dash across the road; the first time I saw that vehicle was when it came into contact with my sister.

Romiel Sookwa, the father of the Plaintiff said that upon information received he went to Victoria Hospital on the 27th day of July, 1990 and there he saw the Plaintiff "my daughter lying on a bed bleeding from both nose and head."

He said that she stayed at the said hospital for eighteen (18) days and he visited her twice a day during that period and was unable to work. He estimated that he earned Sixty EC Dollars (\$60.00) a day as a self-employed farmer. He tendered receipts from Police report and confirmed that he paid Dr. Richardson St. Rose for Plaintiff's visit to him.

The first Defendant told the court that she was a housewife; that her daughter Diedre Casimir purchased a vehicle Registration No. HA3475 and that the second Defendant drove the said vehicle as a passenger bus for and on behalf of her said daughter.

Under cross-examination this witness however admitted that she was the person who financed the loan for the purchase of the vehicle since her daughter was a Bank Clerk and therefore the vehicle was registered and insured in her name.

Hugh Sealy the Second Defendant told the court that he was the driver of vehicle HA3575 which collided with the Plaintiff. He said that he drove the said vehicle as a passenger vehicle and was paid for his services by Diedre Casimir the daughter of the First Defendant.

He said that the morning in question about 8:40 a.m. he was transporting people from Castries to Gros-Islet as usual, that on approaching the Sunny Acres gap he "noticed a white van parked on my left, that van was off the road, when I got about three (3) yards before the van that was parked I blew the horn, when I got exactly parallel to the van I heard a sound on the left front of my vehicle when I looked I noticed that it was a young lady crossing in front of the same parked vehicle and hit me directly into the left front of my vehicle. Then I noticed that it was the young lady trying to cross and whilst passing she hit the left front of my vehicle and that's it. The vehicle stopped immediately and I noticed it was an accident. I came off and I supported the young lady . . . I was driving at about 20 - 25 miles an hour."

He further told the court that the traffic "case was dismissed, Lenora Sookwa admitted that she did not look, she just crossed."

This witness vehemently denied the statement of David Sookwa who told the court that Defendant's vehicle stopped 120 feet from where it struck his sister and that Plaintiff had almost completed the road when the vehicle knocked her. The witness emphasised and demonstrated "my vehicle got into contact with the Plaintiff on the quarter of my side of the

road." He concluded his evidence in chief by informing the court that only the left fender and indicator of his vehicle that were damaged.

Under cross-examination he told the court that on the day in question he could have seen the road in front of him clearly, for there was no obstruction since the white parked vehicle had only its two right wheels on the road, the left wheels were off the road.

He emphasised that the Plaintiff came from behind the parked vehicle and that he could not have seen her. He denied the Plaintiff's statement that she "looked right, left and then right."

He admitted that there was a small drag mark of 4½ yards and in reply to the maximum speed limit in that area he said "In 1990 maximum was 35 - 40 miles per hour. I am not sure of it."

There were no addresses by Counsel. Dates were set but not adhered to. Finally both Counsel asked the court to deliver a decision without hearing their addresses.

CONCLUSION

The facts of the case clearly discloses that the Plaintiff blames the Second Defendant for the accident and the cause of her injuries whereas the said Defendant is of a different opinion, that it was the Plaintiff who was the cause of the accident and her consequent injuries.

It would have been observed that at the trial no independent witnesses for example the driver of the parked white vehicle, or another passenger or passer-by gave evidence.

The area under consideration, Sunny Acres gap is outside the city limits but within the quarter of Castries. (**First schedule to Castries Corporation Act of 1967**).

Moreover the maximum speed limit for passenger vehicles is 30 miles per hour. (**Third schedule to Motor Vehicles and Road Traffic Act 1988**).

The Second Defendant told the court that the Plaintiff admitted at the Magistrate's Court that she never looked right, left and right again as she said in court. This statement of the Second Defendant I find not impossible but highly improbable.

The said Defendant told the court that he was driving at 20 - 25 miles an hour at the time the accident occurred.

I do not believe the Defendant since on his own admission he did not know the maximum speed for the type of vehicle he was driving in that area and told the court it was between "35 - 40 miles per hour."

It is also my view that the Plaintiff was not as prudent in her crossing of the road as she would have the court believe.

I am of the opinion that the Plaintiff saw the on-coming vehicle but misjudged its speed.

Based on the above, I find both the Plaintiff and the Second Defendant equally liable for the accident.

In Civil Appeal No. 1 of 1996 British Virgin Islands.

MARTIN ALPHONSO ET AL and DEODAT RAMNATH

Satrahah Singh JA said at page 6 -

"In order to fix vicarious liability for the negligence of the driver of a motor car on the owner of the vehicle, it must be shown that the driver was using it for the owner's purposes under a delegation of the task or duty."

The evidence discloses that the First Defendant is the owner of the vehicle. She told the court that she purchased the vehicle for her daughter but admitted that the registration and insurance were in her name. The logical and only conclusion is that she is the owner of the said "HA3475."

Moreover, the evidence further discloses that the Second Defendant was doing what he was employed to do and was not on an "frolic" of his own.

I find as a fact that the First Defendant is therefore vicariously liable for the accident.

DAMAGES

I now move on to deal with damages which has repeatedly been quoted to be "a matter for the exercise of the trial judge's discretion." The Plaintiff was not yet nineteen (19) years at the time of the accident. She was a school girl preparing for graduation, one who was very active in sports.

The injuries suffered by the Plaintiff have left her with a short right leg, constant giddiness and headaches, pain in the pelvic girdle, loss of full hearing in the right ear, permanent loss of smell and the Orthopaedic Surgeon has calculated her permanent disability at thirty percent (30%).

GENERAL DAMAGES

I have considered the principles set down when considering the various heads of damages in particular the nature and extent of the injuries sustained by the Plaintiff and her resulting physical disability, her pain, her suffering and loss of her amenities.

(MARTIN ALPHONSO ET AL vs DEODAT RAMNATH (SUPRA))

It is also significant to note that the Plaintiff is a young female person and a short right leg would be considered more of a disability to a young female as compared with a young member of the male species.

I accordingly award the Plaintiff Twenty Thousand Dollars (\$20,000.00) for **pain and suffering** and Eighty Thousand Dollars (\$80,000.00) for **loss of amenities**.

SPECIAL DAMAGES

Under this head Night dresses and hospital necessities were recorded as Seven Hundred and Twenty-Eight Dollars and Forty Cents (\$728.40). The Plaintiff did not produce any receipts to substantiate the request but it is expected that these were indeed bought and used by the Plaintiff during the eighteen (18) days at the hospital. I therefore allow Seven Hundred Dollars (\$700.00).

The Plaintiff's brother David Sookwa said that he noticed Plaintiff's watch was missing immediately after the accident. I allow One Hundred Dollars (\$100.00) for the watch.

Police Report was tendered without receipt but Judicial Notice taken of price at that time as Fifty Dollars (\$50.00) and that amount should be allowed.

Medical Bills tendered in sum of One Hundred and Fifty Dollars (\$150.00) were accepted.

Transporting Plaintiff to hospital and delivering of message about accident to the family I accept and should give the requested sum of Sixty Dollars (\$60.00).

Cost of care provided by applicant's mother I accept and should allow the amount of Two Thousand Six Hundred and Forty Dollars (\$2,640.00) as claimed. (See **HUNTE V SEVERS 1994 2WLR PAGE 602**).

The Plaintiff suffered partial loss of hearing and permanent loss of smell. I should allow the amount of Three Hundred and Forty Dollars (\$340.00) as claimed for special costs of eats and drinks bought.

I should give the amount of Two Hundred and Twenty Dollars (\$220.00) for the standing fan bought for her comfort at hospital. Total amount for items under special damages should therefore be Four Thousand Two Hundred and Sixty Dollars (\$4,260.00) and I so allow.

MY ORDER WILL BE AS FOLLOWS

General Damages in the sum of One Hundred Thousand Dollars (\$100,000.00).

Special Damages in the sum of Four Thousand Two Hundred and Sixty Dollars (\$4,260.00).

As I have stated before I found that the Plaintiff contributed to the accident in the same degree as the Second Defendant.

I would hold that the Plaintiff was Fifty percent (50%) liable and the Defendant the other Fifty percent (50%).

- (1) Consequently, the Defendants are therefore liable to the Plaintiff in the sum of Fifty percent (50%) of One Hundred and Four Thousand Two Hundred and Sixty Dollars (\$104,260.00) = Fifty Two Thousand One Hundred and Thirty Dollars (\$52,130.00).
- (2) Interest on Fifty Two Thousand One Hundred and Thirty Dollars (\$52,130.00) from date of judgment to date of payment.
- (3) Defendants to pay costs to the Plaintiff to be agreed or otherwise taxed.

**SUZIE d'AUVERGNE
HIGH COURT JUDGE**