

**Magnan v Lucas & Or
(2002) SLR 123**

Bernard GEORGES for the Plaintiff
Kieran SHAH of the Defendants

Judgment delivered on 18 February 2002 by:

PERERA ACJ: This is a delictual action for damages arising from personal injuries suffered by the Plaintiff. It is averred that on 16 February 1997, the Plaintiff who was a passenger in the omnibus bearing on S.2313 belonging to the second Defendant Corporation (SPTC) and driven by the first Defendant dragged her along the road after she had disembarked.

The Defendants have accepted liability for the accident and hence this Court is called upon to determine only the quantum of damages. It is averred that the Plaintiff was travelling from Mont Fleuri to Cascade that day, and that she asked the driver to stop the bus before the bus stop. As she got down, her clothes got caught to the automatic door of the bus and she got dragged along the road. The Plaintiff testified that consequently she suffered injuries on both buttocks and legs. She was initially hospitalised for ten days and later for one month on re-admission. She claimed that she was operated on thrice.

Regarding her present condition, she stated that she still had pain in her leg, and is being treated by her company doctor as well as Dr Marie of the Les Mamelles Clinic.

Dr Ken Barrant, the Consultant Surgeon, in a report dated 14 August 1997 stated that the Plaintiff had a cyst in the left buttock which had persisted after a haematoma. However draining fluid on 25 May 1997, the mass had been reduced, but still the soft tissues are slightly fuller on the left buttock than on the right. She however had a 6 cm long residual scar. She could walk well and has normal function of the left leg. She however complained that she had pain in the left buttock when standing.

Dr Ludmina Marie who examined the Plaintiff subsequently on 17 July 2000 testified that she came with a pain on the left leg. She found that the left buttock area was swollen and tender, indicating infection. She was treated with antibiotics. Questioned by Counsel for the Plaintiff, she said that the swelling could be due to a trauma or an abscess caused by an infection.

Upon subsequent examination of the Plaintiff at the instance of Court, Dr Marie stated that there is still a deformity of left thigh. She also stated that the pain and the swelling of the left thigh could be attributed to the trauma she suffered in 1997. The Plaintiff produced photographs P1-P3 showing the deformity in 1997 and P5-P8 taken subsequently on second August 2001. Dr Marie, comparing the two sets of photographs could not state the percentage of the improvement of the swelling, but stated that it was

less than before.

On the basis of the medical evidence, it is clear that the Plaintiff has still a residual scar of 6 cm on the right buttock and a permanent mass, or a lump on her left buttock. Those are therefore cosmetic injuries. As regards physical pain, medical evidence supports that she has some pain in the left buttock when standing. No medical reports were furnished regarding the injuries the Plaintiff suffered at the time of the accident on 16 February 1997 and her hospitalisation for 10 days. However according to the testimony of the Plaintiff, thereafter she was admitted once more to the hospital for 1 1/2 months during which time she underwent three operations. It is therefore reasonable to hold that she underwent pain and suffering for about two months.

Damages

The Plaintiff claims a sum of R25,000 for pain and suffering. It is reasonable to accept that the Plaintiff suffered immense pain as a result of the direct injuries to her buttocks. The haematoma and the scarring are still persisting though markedly reduced. Consequently I consider a sum of R15,000 to be adequate compensation under that head. I would consider the loss of enjoyment, and amenities of life, and disfigurement cumulatively. It is obvious that the haematoma on her left buttock is prominent, and hence she would experience embarrassment when wearing a swimsuit or a pair of shorts. This is a handicap she would suffer for a long time, as there is no prognosis that the haematoma will completely disappear.

In the case of *Ruiz v Borremans* (SCA 22/94) the Court of Appeal considered a global sum of R40,000 for pain and suffering and a 5% permanent incapacity for a residual injury consisting of a permanent swelling of the left foot which necessitated the wearing of a special shoe made to measure.

In the case of *Terence Dingwall v Royce Dick* (CS 207/95) I awarded a sum of R15,000 for pain and suffering and R30,000 for permanent deformity caused to the nose, in an
On a consideration of those two previous awards, I award a sum of R30,000 in respect of the second and third heads of damages, cumulatively.

Judgment is accordingly entered in favour of the Plaintiff in a total sum of R45,000 together with interest and costs.

Record: Civil Side No 406 of 1998