

TR 47

Facts

A citizen of both Mauritius and the United Kingdom joined a company as marketing director on a contractual basis.

She was dismissed after 13 months of service on the ground that the company could not afford to continue to employ her at the rate agreed. By a statement of claim, she sued the company in tort for the injury she has suffered as a result of the company's wrongful acts and doing and "abus de droit" and claimed an amount of Rs17.8 m as damages.

The company contended that the parties who are linked by a contract can only ground any claim arising from the breach of the contract on the basis of contractual liability and not in tort.

An amount of Rs 5.6 m has been awarded to the plaintiff instead of Rs17.8 m claimed by her as damages.

According to the plaintiff the amount of Rs5.6m represents compensation for injury and not compensation for loss of office which is assessable by virtue of Section 10(1)(a)(ii) of the Income Tax Act.

Point at issue

Whether the amount of Rs5.6 m is emoluments under Section 98 of the Income Tax Act and therefore taxable, or whether it represents compensation payable for injury suffered by the plaintiff i.e damages for "abus de droit".

Ruling (issued in March 2006)

The amount of Rs 5.6 m and any other amount received by the plaintiff on her dismissal from her former employer in excess of severance allowance (to be computed at punitive rate in accordance with the Labour Act) constitute emoluments and therefore subject to PAYE.