

EASTERN CARIBBEAN SUPREME COURT  
SAINT VINCENT AND THE GRENADINES  
IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV2020/0007

BETWEEN:

EDSON BYNOE

Claimant

AND

LEONARD TONEY

KAYLA TONEY

Defendants

**Before:** Her Ladyship the Hon. Justice Gertel Thom (Ag.)

High Court Judge

**Appearances:**

Mr. Ronald Marks of Counsel for the Claimant

Mr. Duane Daniel and Ms. Tonya Da Silva of Counsel for the Defendants

2024: September 27

2025: March 10

May 14

December 23

**JUDGMENT**

**Introduction**

[1] **THOM J (Ag):** On the 28th day of November 2018 at around 9:30am, a collision occurred on the Arnos Vale Public Road between a motor vehicle PN364, a jeep driven by the 2nd Defendant

and the Claimant who was riding a bicycle. As a result of the collision, the Claimant suffered injuries to his body. He was hospitalized from 28<sup>th</sup> November 2018 to 18<sup>th</sup> December 2018.

- [2] The Claimant instituted these proceedings against the 1<sup>st</sup> Defendant, who is the registered owner of the jeep PN364 and the 2<sup>nd</sup> Defendant the driver of the jeep at the time of the collision. He alleged that the collision was caused due to the negligence of the 2<sup>nd</sup> Defendant. He outlined the following particulars of negligence of the 2<sup>nd</sup> Defendant as follows:

- (a) Failed to keep any or any proper lookout.
- (b) Failed to stop, slow down, swerve or otherwise manage or control the motor vehicle to avoid the collision.
- (c) Failed to take any adequate care for the safety of the Claimant or other road users.
- (d) Failed to apply brakes in time or at all.
- (e) Failed to keep proper maintenance of the vehicle.
- (f) Failed to use her indicator light to indicate to the Claimant that she intended to turn left.

- [3] The Claimant alleges that because of the matters stated above, the Claimant has suffered personal injuries and sustained loss and damage. He outlined the injuries he suffered as follows:

- (a) Fracture of the 3<sup>rd</sup> and 4<sup>th</sup> metacarpal bones.
- (b) Swelling
- (c) Dislocation of the left thumb.
- (d) Continuous pain in the left hand as a result of the above.

- [4] The Claimant claims special damages in the sum of \$16,365.00 and continuing, general damages, interests and costs.

- [5] The 1<sup>st</sup> Defendant in his defence denied the claim and alleged that the collision was caused as a result of the Claimant's negligence, which he outlined as follows:

- (a) Failed to keep any or any proper look out;
- (b) Failed to head the turning signal made;
- (c) Failed to take adequate precautions for his safety as a road user.
- (d) Sought to overtake a vehicle when it was not safe so to do.
- (e) Failed to stop, and or slow down, so as to avoid collision.
- (f) Failed to manoeuvre his bicycle so as to avoid collision.

- [6] The 2<sup>nd</sup> Defendant in her defence denied the particulars of negligence, injuries and loss of amenities outlined by the Claimant in his claim. In her defence she alleged that she was in the process of turning into the Beachmont gap when the collision occurred. She denied that she pulled her vehicle to the right side of the road, but rather she slowed down to make the left-hand turn, she signalled then turned left. The Claimant sought to overtake her on the left and collided with her vehicle.
- [7] The 2<sup>nd</sup> Defendant further alleged that the collision was caused by the Claimant, alternatively he was contributorily negligent for the same reasons as outlined by the 1<sup>st</sup> Defendant.

[8] **ISSUES**

1. Whether the collision was caused by the negligence of the 2<sup>nd</sup> Defendant.
2. Whether the Claimant was contributorily negligent.
3. If the 2<sup>nd</sup> Defendant was negligent whether the 1<sup>st</sup> Defendant is vicariously liable.
4. If the 2<sup>nd</sup> Defendant was negligent what damages should be awarded to the Claimant, and if the Claimant was contributorily negligent, what reduction should be made to the damages awarded.

**The Evidence**

- [9] The Claimant testified and called one witness Ms. Jneika Charles. The 2<sup>nd</sup> Defendant testified and called an expert witness Mr. Artis Davis. The 1<sup>st</sup> Defendant did not testify nor call witnesses.

**Claimant's Evidence**

- [10] Edson Bynoe in his witness summary stated that on the 28<sup>th</sup> day of November 2018, he was riding his bicycle from Arnos Vale towards Kingstown. When he was in the vicinity of the New Democratic Party Head Quarters and the St. Vincent Cocoa Company, he saw motor vehicle PN364 driven by the 2<sup>nd</sup> Defendant Ms. Toney in front of him. When he reached the Beachmont gap, Ms. Toney pulled her vehicle to the right without any indication as if to join the middle lane of the road. He continued on the left hand side of the road and when he got alongside Ms. Toney's vehicle she suddenly pulled over to the left lane without warning. He tried to manoeuvre his cycle further to the left to avoid colliding with Ms. Toney's jeep but the vehicle collided with the front

wheel of his bicycle and he fell to the ground on his left side. The front wheel of Ms. Toney's jeep stopped on his left hand. He hit the vehicle and she reversed the jeep and he realized his hand was severely damaged and he experienced excruciating pain.

- [11] Ms. Toney explained to him that her indicator light was not working. Ms. Toney agreed to take him to the hospital, while on their way to the hospital, in the vicinity of the Peace Memorial Hall, he observed he was losing blood as a result of the injury to his hand, he suggested to Ms. Toney that she should use her horn so that other drivers would realize that there is an emergency and give way, but Ms. Toney stated that the vehicle's horn was malfunctioning.
- [12] He was admitted at the Milton Cato Hospital on the said 28<sup>th</sup> November 2018 and remained in the hospital. During this period, surgery was done on his left hand. As a result, he had six pieces of steel attached externally to his left hand. He continued to experience excruciating pain and after further x-rays were done, he underwent a second operation in relation to his broken thumb.
- [13] During the period of his hospitalization, he relied on his girlfriend Ms. Jneika Charles (Ms. Charles) to provide his meals and assist him with bathing and dressing. After he was released from the hospital on December 17, 2018, he resided with Ms. Charles and her mother. He depended on them to assist him with washing, cooking, and cleaning. Ms. Charles would bathe and dress him. He was forced to sleep on his back which eventually became painful. Ms. Charles would assist him with repositioning. He received some physiotherapy, but he was unable to attend all of the sessions due to his financial difficulties as he could not work.
- [14] He suffered loss of earnings for three years from 28<sup>th</sup> December 2018 to December 2021 a sum of \$39,600.00. He is a dance instructor and choreographer. Since the accident he has experienced significant limitations in doing so.
- [15] He was employed with Advanced Graphics at the time of the collision. He earned a salary of \$1,100 per month and overtime. He was a designer. He prepared designs for businesses. As a result of his injuries he could no longer perform his functions. Having lost his job, he fell into a state of depression.
- [17] He is concerned about future employment due to his reduced mobility. He was employed at JFL Freight Series from December 2021 - March 2022. The job required preparing documents on the computer and delivering packages. He was unable to continue due to the limitations of his injured left hand.

- [18] In April 2022 he gained employment at Gate Three Restaurant and Lounge as an assistant bartender. He found it difficult to perform the duties which included washing plates and couriering items from the kitchen, bar and storeroom. He would on occasion lose his grip on the left hand. He has a permanent large keloid on the top of his left hand. To avoid stares and questions, he wears a black fingerless glove over his left hand.
- [19] He was also employed at Gate 3 in April 2022 where he earned \$1,400 per month as an assistant bartender. His duties included couriering items from the kitchen, bar and storeroom. He was also forced to leave this job as he had difficulties carrying out his tasks which included holding the waiters, washing glasses and peeling fruits.
- [20] On 2<sup>nd</sup> February 2021 his hand was assessed by Dr. Malcolm Grant. A copy of the medical report of Dr. Grant was attached to his witness statement and was admitted into evidence.
- [21] In his further witness summary on the 31<sup>st</sup> July 2024, Mr. Bynoe stated that he ceased working at Advanced Graphics on the 28th November 2018.
- [22] He was employed at Ezone Shipping Agency in October 2022 as a cashier. He earned \$1,010,00 per month. He ceased working there around November 2020 as his injury affected the performance of his duties which required him to type documents.
- [23] After surgery it was very painful for him to use his left hand which is his dominant hand. He has not fully recovered from his injuries, and this has caused him to be unable to find employment. The injuries affected his ability to hold items, do tasks such as laundry, cooking, cleaning etc. He relied on the assistance of his sister Natalie Scott and his ex-girlfriend Ms. Charles.
- [24] Under cross-examination, Mr. Bynoe testified that the accident occurred around 9.30 am. He was not late for work although the work hours were 8.30am – 4.30pm because the owner who had the key for the building had informed him that he would not be at the office until 10.00am.
- [25] Mr. Bynoe agreed that the collision occurred at the intersection of the Beachmont gap and the Windward Highway. He also agreed that as the jeep approached the intersection he was on the side of the jeep by the area of the gas tank. He also agreed that the vehicle was a right handed vehicle and he was on the left side of the vehicle and it would be difficult to see a hand signal. The collision occurred as the vehicle turned into the gap. The vehicle was at an oblique angle when the collision occurred. He did not expect a hand signal at the gap.
- [26] In relation to the issue of damages, Mr. Bynoe testified that he was a guest at his girlfriend's home. Ms. Charles and her mother washed for him with their hands. He could not work for three

years. He agreed he was working by January 2022. The sum of \$39, 600.00 claimed is for loss of income for three years. He agreed that the medical reports did not specifically state that he could not work between 2019 – 2021. Mr. Bynoe agreed that he entered into the “Mr. St. Vincent and the Grenadines” competition in October 2019. There was a promotional video showing him doing several exercises including two handed push-ups where his body weight was supported by both hands. At the competition he performed a dance routine which involved “a caterpillar motion” which required him to use his hands but more his right hand. He is right-handed. His talent was adjudged the best talent and he placed 1st runner up.

### **Jneikia Charles**

- [27] Ms. Charles testified that while the Claimant was hospitalized, she visited the hospital every day and took food for him. While at the hospital she assisted the Claimant with bathing and getting dressed. When the Claimant was discharged from the hospital on the 17<sup>th</sup> day of December 2018, he moved into her mother’s house where she and her mother cooked for the Claimant and assisted him with bathing and getting dressed. This continued for approximately six months. The Claimant had difficulty sleeping as he was required to sleep on his back or his right side. When the steel was removed from his hand, the Claimant’s fingers were not as flexible as before the collision. A large, keloid scar is now at the back of his left hand. The Claimant could not play with their son or provide for him financially since he was unable to work due to the injury. The Claimant has difficulty holding or grasping items with his left hand.
- [28] Under cross-examination, Ms. Charles testified that she was in a relationship with Mr. Bynoe for about five (5) years before the accident. They have a child together. She lives with her mother. The Claimant was given whatever food they cooked. They washed his clothes along with their clothing.
- [29] Mr. Charles agreed that after the accident the Claimant was employed at Gate 3 Restaurant, MNT Restaurant, and also at Ezone. She agreed that the Claimant ceased working at Ezone after a Police matter but she did not know why he stopped working at Gate 3 Restaurant.
- [30] Mr. Charles further testified that while the Claimant was living at her home, he participated in the Mr. St. Vincent and the Grenadines contest. He won the best talent prize at the show. His talent involved a dance with a caterpillar motion on the floor. It involved using both of his hands. She

could not recall him participating in a promotional exercise video for the show. The show was about one year after the accident.

### **Defence**

- [31] That the 2<sup>nd</sup> Defendant testified that the 1<sup>st</sup> Defendant is her father. He is the owner of the PN364. On Nov. 28, 2018 at about 9:25am she was driving motor vehicle PN364. Her niece and her daughter were passengers in the back seat of PN364. She was traveling along the Richmond Hill public road towards Kingstown. When she was around the Arnos Vale/ Sion Hill area she passed the Claimant who was riding a bicycle towards Kingstown. When she was in the vicinity of "Democrat House", there was a line of traffic in front of her. The traffic was moving slowly. When she reached the bus stop before the Beachmont gap, she checked her mirror and signalled with her right hand that she was turning left into the Beachmont gap. She was taking her niece to preschool. As she was turning into the gap, she felt something hit the left side of PN364 and she applied brakes and stopped as she was driving slowly. She had checked her mirror while attempting to turn into the gap and did not see anyone seeking to overtake her vehicle on the left or right side nor did she hear anyone blowing their horn to alert her that they were attempting to overtake on the right or left side. PN364 was damaged to the left side close to the middle and toward the front. The left side mirror was broken off.
- [32] When her vehicle came to a stop she heard someone shout reverse. She then realized that it was the cyclist she had passed earlier. Her vehicle was on his hand. She took the Claimant to the hospital.
- [33] Under cross-examination the witness testified that the jeep is a right-handed vehicle. She signalled that she was turning left with her right hand. Before she turned her vehicle, she did not see the Claimant. The collision occurred in the gap. She disagreed that her vehicle was on the Windward highway when the collision occurred. When she reversed to release the Claimant's hand, she reversed towards the Windward Highway but not so far as to be on the Highway. She checked both mirrors before turning into the gap. She did not see the Claimant. Ms. Toney confirmed that she knew the vehicle signal lights were not working, but she chose to drive it with the defect.



### **Mr. Artis Davis**

- [34] Mr. Davis testified that on September 21, 2022 leave was granted to the Defendant to adduce expert evidence of Mr. Artis Davis. Mr. Davis is a retired Police Officer of the Royal St. Vincent and the Grenadines Police Force. He retired at the rank of Superintendent of Police having served in that capacity for six (6) years. He is the proprietor of Supreme Investigations and Security Services INC. He has investigated several accidents on behalf of Insurance companies in St. Vincent and the Grenadines. He visited the scene of the accident, interviewed the Claimant and the 2<sup>nd</sup> Defendant and recorded statements from them. He opined that the Claimant was responsible for the accident as he sought to overtake the 2<sup>nd</sup> Defendant on the left side of the road. He made several findings of fact based on the statement of the Claimant and the 2<sup>nd</sup> Defendant.
- [35] Under cross examination Mr. Davis testified that he was a cyclist. He has never experienced a cyclist overtaking on the right-hand side. The accident would not have occurred if the 2<sup>nd</sup> Defendant had not turned into the Beachmont gap.

### **Issues**

- [36] The issues which arise for determination by the Court are:
- (i) Whether the collision was caused by the negligence of the 2<sup>nd</sup> Defendant;
  - (ii) Whether the Claimant was contributorily negligent;
  - (iii) If the collision was caused by the negligence of the 2<sup>nd</sup> Defendant is the 1<sup>st</sup> Defendant vicariously liable.
  - (iv) If the 2<sup>nd</sup> Defendant's negligence caused the collision, what damages, if any, should be awarded to the Claimant.

### **Liability**

- [37] I will deal first with the issue of Liability. In so doing I will deal with issues (i) and (ii) together.



### Claimant's Submissions

[38] Learned Counsel Mr. Marks submitted that to establish negligence, the Claimant was required to prove three elements being the Defendants owed him a duty of care, there was a breach of that duty of care, and he suffered damage as a result of that breach of duty of care.

[39] Learned Counsel submitted the legal principles which guide the Court in determining whether there was a duty of care is the often-cited passage in the judgment of Rawlins J (as he then was in the case of **Cheryl Edwards (Administratrix for the Estate of Jenique Lewis) v Ethel Mills ANUHCV 1988/0168**)

“Drivers of motor vehicles are under a duty to exercise due care on the road. They are expected inter alia to determine what other users of the road are doing. They are expected to manoeuvre their vehicles in order to prevent and avoid accidents. They are expected to use and observe proper signals. Signals must be clear and unambiguous and as far as practicable in keeping with the Highway Code. They must always exercise due care and attention. This might at times require a driver to stop in order to have a proper look out so as to determine whether it is safe to proceed or to overtake another vehicle. It all depends upon the circumstances including the weather, visibility, the number of vehicles on the road, the presence of pedestrians and the state of the road.”

[40] Mr. Marks also relied on the following passage in **Page v Richard and Draper**:

“It seems to me that when a man drives a motor car along the road, he is bound to anticipate that there may be people or animals or things in the way at any moment, and he is bound to go not faster than will permit or his stopping or deflecting his course at any time to avoid anything he sees after he has seen it. If there is difficulty in the way of seeing as for example, a fog, he must go slower in consequence. In a case like this when a man is struck without the driver seeing him, the dilemma either he was not keeping sufficient look-out or if he was keeping the best look-out possible then he was going too fast for the lookout that could be kept. I really do not see how it can be said that there was no negligence in running into the back of a man. If he had better lights or had kept a better look-out, the probability is that the accident would never have happened.”

[41] It is agreed by the parties that the 2<sup>nd</sup> Defendant owed the Claimant a duty of care. What is in dispute is whether the 2<sup>nd</sup> Defendant breached that duty of care.

[42] Mr. Marks submitted that in order to determine whether the 2<sup>nd</sup> Defendant breached the duty of care to the Claimant, the Court must consider whether or not a reasonable man placed in the 2<sup>nd</sup> Defendant's position, would have acted as she did. In determining what a reasonable man would have done in the circumstances, the Court must assess the standard of care expected of the 2<sup>nd</sup> Defendant. In so doing the Court must take into account (1) the likelihood of harm, (2) the seriousness of the injury that is risked and (3) the cost and practicability of measures to avoid them.

[43] Mr. Marks contended that the greater the likelihood that the Defendant's conduct will cause harm the greater the amount of caution required by her. This principle is outlined in the following statement of Lord Wright in the case of **North Western Utilities Ltd v London Guarantee and Accident Co. Ltd** 1936 A.C. 108 at 126:

“The degree of care which duty involves must be proportional to the degree of risk involved if the duty of care should not be fulfilled.”

[44] This principle was applied in **Mawson v George De Nebriga and Others** (1969) 15 WIR 147.

[45] Mr. Marks submitted that the following circumstances show that the 2<sup>nd</sup> Defendant breached her duty to take care:

- (i) On the morning of the incident the 2<sup>nd</sup> Defendant operated her motor vehicle with a known defect being the signal lights were not working.
- (ii) By operating the vehicle in the defective condition would raise the duty of care as the vehicle would be posing a higher degree of risk to other road users since the driver would only be able to use hand signals which would be highly unlikely to be seen by the Claimant who was travelling on the left of the slow-moving traffic.
- (iii) While a SUV and a bicycle are both classified as vehicles under the Road Traffic laws of St. Vincent and the Grenadines, it is not unusual to see bicycles on the roads of St. Vincent daily where there is no special lane for bicycles as exist in some countries.
- (iv) It is not a coincidence that the bicycle lanes in the United Kingdom are located on the left of the road and those in the United States of America on the right. When a cyclist is met with slow-moving traffic, he has one of the three options being: (a) remain behind the line of traffic; (b) join the line of traffic on the left or (c) on the right. If a cyclist passes on the left there is the

danger of a vehicle turning into its path while making a left turn or changing lane to the left. A cyclist who decides to choose the right lane faces the same danger in addition to the inherent risk that comes with facing oncoming traffic. Mr. Marks submitted that for a cyclist to ride on the right is far more dangerous than on the left.

- [46] In view of the foregoing, Mr. Marks urged the Court to find that the 2<sup>nd</sup> Defendant breached the duty of care to the Claimant. She did so by driving her vehicle while in a defective condition. As a result of the defect the Defendant was not warned that the Claimant was turning into his path. Without this warning, he had no opportunity to stop, steer or otherwise avoid the collision.
- [47] Mr. Marks made no submissions in relation to contributory negligence.

### **Defendant's Submission**

- [48] Learned Counsel Mr. Daniel for the Defendants submitted that the accident was caused solely because of the Claimant's negligence. He referred to the following passage in the case of **Blyth v Birmingham Waterworks Co.** [1843-60] AER 478 at 479:

"Negligence is the omission to do something which a reasonable man, guided upon these considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do."

- [49] Mr. Daniel submitted that in determining what a reasonable man would have done in the circumstances, the Court is required to take into account:
- (a) the likelihood of harm;
  - (b) the seriousness of the injury that is risked;
  - (c) the importance or utility of the 2<sup>nd</sup> Defendant's conduct and;
  - (d) the cost and practicality of measures to avoid the harm.

- [50] Learned Counsel submitted that the Court must consider the events which led to the collision. Learned Counsel identified the following evidence of the Claimant:

- (i) The 2<sup>nd</sup> Defendant's vehicle was ahead of the Claimant's when he was nearing the end of the bus lane before the Beaumont gap. Mr. Daniel submits that this shows that the Claimant had a full view of the 2<sup>nd</sup> Defendant's vehicle that was ahead of him.

- (ii) The Claimant also agreed when he got to the Beachmont intersection, the 2<sup>nd</sup> Defendant's vehicle was already ahead of him.
- (iii) As the vehicle approached the intersection, the Claimant was by the left side of the vehicle approaching the front door.
- (v) The Claimant agreed that overtaking must be on the right side of a vehicle.
- (vi) The Claimant a licensed driver agreed that as a driver he would not expect a person to overtake him on the left hand side.
- (vii) The Claimant agreed that one way of indicating a turn is to use a hand signal.
- (viii) The Claimant agreed it would be difficult to see the hand signal if you are on the left side of the vehicle.
- (ix) It is unsafe to drive alongside a vehicle at an intersection.

[51] The 2<sup>nd</sup> Defendant's version of the accident is that she gave a signal with her hand that she was turning as the vehicle indicator was not working. She was already turning when the accident occurred.

[52] Mr. Daniel relied on the evidence of the Defendant's witness Mr. Artis Davis where he emphasized that "It is a cardinal road sin to overtake other vehicles where the main road intersects with a minor road." Further Mr. Bynoe also had an obligation to overtake only when it was safe to do so. It was unsafe for Mr. Bynoe to overtake on the left side of PN 364, especially since (1) overtaking should be done on the right side in such circumstances, and (2) PN 364 was travelling along the main road in the vicinity where a minor road intersects with same."

[53] Learned Counsel contended that while it is not unusual to see pedal cyclists in traffic in St. Vincent and the Grenadines on a daily basis, pedal cyclists like any vehicle operator, must comply with the law. They must comply with the Motor Vehicles and Road Traffic Act of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

[54] Mr. Daniel submitted that it is well known that a vehicle operator should not overtake at an intersection, given the risks associated with same; that being it is uncertain that the vehicle that is being overtaken could make a turn into the intersection. The Claimant admitted under cross-examination that based on the position of where he was (alongside the 1<sup>st</sup> Defendant's vehicle) he was at a risk if the 2<sup>nd</sup> Defendant suddenly turned into his direction. By so doing the Claimant placed himself at that risk, and an accident occurred. The damage to the 1<sup>st</sup> Defendant's vehicle

included damage to the mirror and side which shows that the 2<sup>nd</sup> Defendant was already turning into the Beachmont intersection. Therefore, the collision was due to the fault of the Claimant.

### **Contributorily Negligence**

- [55] Mr. Daniel submitted alternatively that if the Court is to attach liability for negligence to the 2<sup>nd</sup> Defendant, the Defendants submit that the Claimant was contributorily negligent having regard to all of the circumstances. The principle of contributorily negligence is well illustrated in the case of **Ramdath v Telecommunication Services** T/T 2009 CA.48; **Winmark Limited et al v Henry Augustin** Claim No. 839 of 1996 where at paragraph 10, it is stated:

“The only question that appears to me to be capable of debate is whether the 2<sup>nd</sup> named Claimant is guilty of contributorily negligence such as to reduce damages.” As Lord Denning said in **James v Quarries Ltd** [1952] 2AB 608 at p.615:

“Although contributorily negligence does not depend on a duty of care, it does depend on foreseeability. Just as actionable negligence requires the foreseeability of harm to others, so contributorily negligence requires the foreseeability of harm to oneself. A person is guilty of contributorily negligence if he ought reasonably to have foreseen that if he did not act as a reasonable prudent man, he might be hurt himself; and in his reckoning he must take into account the possibility of others being careless.”

- [56] Mr. Daniel also relied on the case of **Darel Christopher v Benedicta Samuels aka Samuels Richardson and Co.** BVIHCV 2008/0813 where the Court found on the evidence that the Claimant who had seen the motor truck at a distance of 150ft, but failed to stop or slow down or do anything to avoid the collision and who was driving at a significant speed, was 75% liable for the accident.
- [57] Learned Counsel also referred to the case of **James Joseph v David Culzac et al** SVGHCV 2015/0058 where the Court found the Claimant to be contributorily negligent, the Claimant having failed to stop before making the turn off the main road, and he was travelling on the wrong side of the road even though he had seen the Defendant about one hundred feet away prior to the accident.
- [58] Mr. Daniel reiterated that the Claimant had a duty as a road user to take care and safety not only for the interest of others, but also for his own interests. He was on the left side of the 1<sup>st</sup> Defendant's vehicle and made no attempt to ensure it was safe to cross the intersection. The

Claimant was travelling alongside the jeep and therefore could not see the 2<sup>nd</sup> Defendant's hand signal.

### Discussion

[59] The Windward Highway is the main road from the Windward side of the Island to the City Kingstown. During peak hours in the morning, the traffic is slow moving. It is not unusual for pedal cyclists to be part of the traffic leading into Kingstown. It is also not unusual for pedal cyclists to travel on the left side of vehicles. Indeed, it is more usual than not. Having heard the evidence of the Claimant and the 2<sup>nd</sup> Defendant. I find that the 2<sup>nd</sup> Defendant drove her vehicle knowing that the rear signal lights were not working. With her signal lights not working, the 2<sup>nd</sup> Defendant was required to take care before making the turn of at the intersection. I take judicial notice that the turn into the Beachmont Gap is a sharp turn and I accept the evidence of the Claimant that the 2<sup>nd</sup> Defendant moved to her right leading him to believe she was going over to the other lane before she turned left. The 2<sup>nd</sup> Defendant had seen the Claimant when she passed Democrat House which is a short distance, approximately 100 hundred yards from Beachmont Gap. The 2<sup>nd</sup> Defendant was fully aware that her signal lights were not working and persons to her left would not see a hand signal. She was therefore required to approach the intersection with caution. I do not believe the 2<sup>nd</sup> Defendant's testimony that she looked carefully in her rear view and side mirrors. Had she done so she would have seen the Claimant.

[60] The law on contributory negligence is well settled. In **Alphonso v Ramnauth** Singh J.A stated:

"It is the guiding principle in proving contributory negligence, is whether the respondent by his acts or omissions contributed to his injuries, in the sense that he failed to take reasonable care for his own safety taking into account as he must that other users of roads are likely to be negligent. It is also a very salutary principle that when one man by his negligence puts another in a position of difficulty, the Court ought to be slow to find that other man negligent merely because he may have failed to do something which looking back on it afterwards, might possibly have reduced the amount of damages. Contributory negligence did not depend on a breach of duty to the Defendant but a lack of care by the plaintiff for his own security. Although contributory negligence does not depend on duty of care, it does depend on foreseeability. Just as actionable negligence requires foreseeability of harm to others so contributory negligence requires foreseeability

to oneself". The Alder (1949) WN 488, Davis v Swan Motor Co. (1949) 2KB: Jones v Liven (1952) 1TLR 1371.

- [61] Having reviewed the evidence and the submission on this issue, I agree with the submissions of Mr. Daniel that the Claimant had a duty of care for his own safety. This required the Claimant as he approached the intersection at the Beachmont Gap on the left side of the road where there was a line of traffic, to keep a keen look out for any traffic that might be turning left into the gap. I agree he would have seen no indicator lights from the 2<sup>nd</sup> Defendant and he would not have seen any hand signal of the 2<sup>nd</sup> Defendant. Having regard to all of circumstances I find that the Claimant was twenty-five percent (25%) liable for the collision.

#### **Whether the 1<sup>st</sup> Defendant is Vicariously Liable for the Negligence of the 2<sup>nd</sup> Defendant**

- [62] Mr. Marks' submission on this issue is very brief and so I will outline it in full:

"The evidence in this case is that the 1<sup>st</sup> Defendant is the owner of motor vehicle PN363. On that day the 2<sup>nd</sup> Defendant was using the vehicle to drop off her child and niece to school on her way to work. The 1<sup>st</sup> Defendant filed a blanket defence but in no other way participated in these proceedings. The 1<sup>st</sup> Defendant is a party to these proceedings as he is the owner of PN364 and on that day in question the 2<sup>nd</sup> Defendant drove the vehicle with his authority."

- [63] Mr. Daniel submitted that mere authority or permission to use a vehicle is not enough to establish vicarious liability. In support of this submission Learned Counsel referred to several authorities including the Privy Council decision in **Rambarran v Gurrucharran** [1970] 1 AER 749, **Eardley Martin v Wayne Hazel and Rudolph Mc. Taire** SVG HCV 1995/ 391, and the decision of the House of Lords in **Morgans v Launchbury and others** [1972] 2AER p.606 where Lord Wilberforce stated:

"For I regard it as clear that in order to fix vicarious liability on the owner of a car in such a case as the present, it must be shown that the driver was using it for the owner's purposes under delegation of a task or duty. The substitution for this clear conception of a vague text based on interest or concern has nothing in reason or authority to commend it. Everyone who gives permission for the use of his chattel may be said to have an interest or concern in its being carefully used and in most cases if it's a car to have an



interest or concern in the safety of the driver, but it has never been held that mere permission is enough to establish vicarious liability.”

[64] Viscount Dilhorne stated the legal position as follows:

“It is not and in my opinion has never been the law of this country that the owner of a chattel is responsible in law for damage done by the negligence of a person to whom he has lent it or whom he has permitted to use it. If all that had to be shown to establish liability on the part of the owner of a vehicle was that he had permitted its use by the person who was negligent then **Hewitt v Bonvin** was wrongly decided. There the son was permitted to use the car and it was held that the father was not responsible for the son’s negligent driving as his son was not his servant or agent at the time.”

[65] While Lord Pearson stated the law as follows:

“My Lords in my opinion the principle by virtue of which the owner of a car may be held vicariously liable for the negligent driving of the car by another person is the principle of “qui facit per allium, facit per se”. If the car is being driven by a servant or agent in the course of the employment or in the course of agency, the owner is responsible for negligence in the driving. The making of the journey is a delegated duty or task undertaken by the servant or agent in pursuance of an order or instruction or request from the owner and for the purposes of the owner. For the creation of the agency’s relationship it is not necessary that there should be a legally binding contract of agency but it is necessary that there should be an instruction or request from the owner and an undertaking of the duty or task by the agent.... I think there has to be an acceptance by the agent of a mandate from the principal though neither the acceptance nor the mandate has to be formally expressed or legally binding.”

[66] Lord Cross of Chelsea stated the law thus:

“Before this case the law as to vicarious liability of the owner of a chattel for damage caused by its use by another person was I think well settled. The owner of the chattel will be liable if the user of it was using it as his servant or agent.”

[67] Mr. Daniel submitted that the Claimant in his pleading simply stated that the 1<sup>st</sup> Defendant is liable for the actions of the 2<sup>nd</sup> Defendant who acted with his authority as his servant or agent.

[68] Mr. Daniel submitted that while the evidence shows that the 2<sup>nd</sup> Defendant was going to take her niece to pre-school which required her to drive along the Beachmont road, however there is no

evidence that the 2<sup>nd</sup> Defendant was driving the 1<sup>st</sup> Defendant's vehicle to do business on his behalf nor is there any evidence to indicate that the 2<sup>nd</sup> Defendant was instructed by the 1<sup>st</sup> Defendant to use his vehicle to drop off the 2<sup>nd</sup> Defendant's niece to school.

- [69] I agree entirely with the submissions of Learned Counsel Mr. Daniel. The legal authorities are very clear, mere authority of the owner to drive a vehicle will not attach liability to the owner for any negligence of the driver. The onus was on the Claimant to prove on a balance of probability that the 1<sup>st</sup> Defendant was vicariously liable. He led no such evidence. He merely pleaded the vehicle was driven with the authority of the 1<sup>st</sup> Defendant. I find the Claimant has failed to prove his claim against the 1<sup>st</sup> Defendant.

### **Damages**

- [70] Mr. Marks submitted that the Claimant is entitled to both special and general damages. I will deal with special damages first.

### **Special Damages**

- [71] Mr. Marks submitted that the Claimant should be awarded special damages as follows:

- (a) Medical Report - Dr. Woods - \$50.00
- (b) Medical Report MCMH - \$690.00
- (c) Integrated Medical Care (#144) - \$500.00
- (d) Integrated Medical Care (#7844) - \$50.00
- (e) Invoice from Dr. Grant - \$1,900.00

Loss of Earnings - \$13,200.00

Total of \$16,390.00

- [72] Learned Counsel submitted that the sums should be awarded as documentary evidence in support of the sums claimed was tendered into evidence without objection.

- [73] Mr. Daniel in his submissions referred to the Claim Form where under the heading special damages the Claimant claimed as follows:

- (a) Medical Report Dr. Woods Invoice No. 564774 - \$25.00
- (b) Medical Bill - \$690.00

- (c) Integrated Medical Care - \$500.00
- (d) Integrated Medical Care Receipts - \$50.00
- (e) Invoice of Dr. Grant of \$1900.00
- (f) Loss of Earnings \$13,200.00

Total of \$16,365.000 and continuing.

### **Medical Expenses**

- [74] Mr. Daniel submitted that based on the evidence, the Claimant is only entitled to \$50.00 for medical expenses. In relation to the sum of \$690.00, Mr. Daniel contended that there being an invoice and not a receipt no award should be made. In relation to the claim for \$500.00 from Integrated Medical Care Counsel submitted that there is no evidence of payment of the sum. There is only one receipt for a sum of \$25.00 to which the Defendants offer no objection. In relation to the sum of \$1900.00, Learned Counsel submitted that no receipt was exhibited evidencing payment of the sum.

### **Discussion**

- [75] The applicable principles relating to special damages are well settled. They are outlined in the often cited case of **Grant v Motilall** T/CA 162 of 1995. There the Court emphasized that special damages must be pleaded and must be particularly proved. The sufficiency of proof depends on the circumstances of each case.
- [76] The special damages which the Defendants dispute were four invoices, being:
- (a) Medical Bill from Milton Cato Memorial Hospital #169308 in the sum of \$690.00.
  - (b) Integrated Medical Care Invoice #144 in the sum of \$500.00
  - (c) Integrated Medical Care Receipt in relation to #7844 in the sum of \$50.00
  - (d) Invoice from Dr. Grant of \$1900
- [77] It is not in dispute that the sums claimed as special damages were outlined in the Claim Form save for the sum of \$1900.00 being expense incurred for examination by Dr. Grant. There was no evidence which contradicted the Claimant's evidence that expenses were incurred. The Defendants dispute the proof of the damages claimed. Mr. Daniel's main argument is that

invoices were adduced at the trial, but there was no evidence of payment of the sums claimed. No receipts were adduced into evidence.

- [78] In relation to the Medical Report of Dr. Woods - Invoice #564774 and Receipt for the sum of \$25.00 the Defendants make no objection to this sum claimed.
- [79] In relation to Medical Bill (MCMH) Invoice #169308 in the sum of \$690.00 the invoice in relation to this sum is dated 15.11.19. It is an invoice from the Milton Cato Memorial Hospital and details the services that were provided to the Claimant during the period 28<sup>th</sup> November 2018 to the 17<sup>th</sup> December 2018. It is not in dispute that the Claimant was at the Milton Cato Memorial Hospital. The fees outlined in the invoice are consistent with a report by Dr. Woods dated 10<sup>th</sup> January 2019 and which was adduced into evidence. The report outlined the injury suffered by the Claimant as a result of the collision and the medical procedures performed in preparation for surgery and after care which included daily antibiotics and analgesics.
- [80] In relation to the Integrated Medical Care Invoice #144 expenses for dressing from the 19<sup>th</sup> December 2018 - 25<sup>th</sup> January 2018, a total of 10 instances of dressing immediately after he was released from the hospital. In his evidence, in his witness summary dated 19<sup>th</sup> August 2022 at para 14 the Claimant stated "On 18<sup>th</sup> day of December 2018 I visited Integrated Medical Care and was seen by Dr. Santiago for outpatient care. I visited the clinic for a period of two months for antibiotics and dressing of my hand."
- [81] In relation to the sum of \$1,900.00, this sum was not included in his claim which was filed on the 21<sup>st</sup> January 2020 as it relates to expenses the Claimant contends that was incurred on the 21<sup>st</sup> day of February 2022. No invoice was exhibited in relation to this sum, rather what was exhibited was a medical report from one Dr. Malcolm Grant dated February 21, 2022. While the report gives a very detail assessment of the injury suffered by the Claimant no mention is made of the cost of the examination and or preparation of the report. No application was made for Dr. Grant to be called as an expert nor was Dr. Grant called as a witness.
- [82] The issue which arises is whether special damages could be awarded where there is evidence of an invoice but no evidence of payment. This issue was considered by the ECSC Court of Appeal in an appeal from Grenada in the case of **Dolette Bartholomew v Kenten Hazzard** GDAHCVAP 2021/0021. There the issue was whether the Learned Master erred in failing to make an award in relation to an autopsy which was performed by a doctor and who had submitted an invoice of US\$20,000 but had not received payment and whether the Learned Master erred

when she awarded a sum of \$4,000 for funeral expenses and not the sum of \$19,682.50 claimed by the Appellant where no receipt or invoice was adduced in evidence..

[83] The Court of Appeal found at paragraph 45 of its judgment that the fact that Dr. Daisley had not yet been paid at the time he gave evidence did not disentitle the Claimant from being awarded special damages. The Court of Appeal did find that there was no reason to interfere with the discretion of the Learned Master in her finding that the sum of \$4,000 was a reasonable sum for funeral expenses.

[84] As stated earlier, the Claimant's evidence was not challenged. No objection was made of the invoices when they were adduced into evidence. The Claimant was not cross-examined in relation to any of the invoices which were tendered into evidence. There was no evidence which contradicted the Claimant's evidence that the expenses were incurred, that the Claimant did not receive the treatment. Having regard to the evidence of the nature of the injuries suffered including the evidence of the medical reports adduced into evidence, I am satisfied that the Claimant has proved on a balance of probability that the expenses were incurred. The fact that there is no evidence that the sums were paid at the date of trial is not a reason not to award the sum claimed. I therefore make an award of the sums claimed for special damages.

### **Loss of Earnings**

[85] Mr. Marks in his submissions outlined the Claimant's loss of earnings to be \$13,200.00.

[86] Mr. Daniel referred to the witness summary of the Claimant in which he stated that he suffered loss of earnings in the sum of \$39, 600.00 for the period November 28, 2018 being the date of the collision to December 2021, and submitted that the Claimant led no evidence in support of the claim for special damages. Further, the submissions of Mr. Marks made no mention of the \$39, 600.00 rather, the sum claimed is \$13,200.00. Mr. Daniel further submitted that the Claimant was able to gain employment from numerous establishments after the accident. Learned Counsel referred to the evidence under cross-examination of the Claimant that he was employed as follows:

- (a) December 2021-March 2022 at JFL Freight;
- (b) October 2020-November 2020 at Ezone Shipping Agency;

- (c) Gate Three Restaurant and Lounge from April 2022- to a date that is unclear since in his witness summary filed July 31, 2022 he stated that he was unemployed.

[87] Mr. Daniel also referred to excerpts from the letter from Advanced Graphics dated January 8, 2019, which stated:

"This letter is to inform you that Edson Bynoe of Arnos Vale is an employee at our business. Mr. Bynoe is a graphic designer and an all-rounder in sign installations etc. He has been employed at our Company since June 2018. His tax monthly salary range from \$1100 and up plus overtime.... He's a good worker and his absence since the accident has made us loss (sic) a few thousand dollars in business seeing it was a rush season Christmas."

[88] Mr. Daniel submitted that this letter written six weeks after the accident shows that the Claimant was still employed. The Claimant did not apply for sick-leave benefits from NIS. This, Mr. Daniel contends shows that the Claimant has failed to mitigate his losses. Further, the medical evidence does not show that the Claimant was unable to work as a result of the injury. Learned Counsel submitted that no award should be made for loss of earnings.

### **Discussion**

[89] In his Claim Form the Claimant claims loss of earnings in the sum of \$13,200.00 and continuing. The claim was filed on the 21<sup>st</sup> day of January, 2020, being one year and approximately two months after the accident. It is not disputed that at the time of the accident the Claimant was employed by Advanced Graphics and that he earned a monthly salary of \$1,100.00. The Claimant also stated in his evidence that he worked overtime on occasions. However, he gave no evidence of the sums earned for overtime work or the frequency with which he worked overtime.

[90] The Claimant exhibited several reports from medical doctors who had examined him but none of the doctors were witnesses at the trial. The contents of the reports were not tested under cross-examination. While the reports gave details of the injuries suffered by the Claimant on his left hand, the reports do not indicate the effects of the injury on his ability to be gainfully employed.

[91] Having reviewed the reports, I bear in mind that the Doctors were not called as witnesses, so the contents of their report were not tested under cross-examination. I note that while the reports

- indicate that there is some disability as it relates to the Claimant's left hand, the reports do not indicate the effects on his ability to be gainfully employed. At the time of the accident, the Claimant was employed as a graphic designer. He also did installation of signs which required him to use a drill and a hammer. The medical evidence does not address whether he would be able to continue in this field he being right-handed and the degree of the disability of the left hand.
- [92] The evidence shows that in December 2019, one year after the accident, the Claimant participated in a physical exercise preliminary to the "Mr. SVG Pageant" which involved the use of both of his hands. At the pageant he was adjudged the 1<sup>st</sup> runner up and best talent.
- [93] I agree with the submissions of Mr. Daniel that the evidence shows further that the Claimant was employed at various periods between October 2020 and July 2022. At one establishment he earned a monthly salary of \$1,400.00, which is in excess of his pre-injury monthly salary. The evidence also shows that in relation to one of the occasions when his services were terminated, it was not due to his injury but rather a police investigation.
- [94] The Claimant has not showed in his evidence that he was unable to gain employment because of his injuries until December 2021.
- [95] I also agree with Counsel for the Defendant that no claim was included in the pleadings or any evidence led on which a Smith and Manchester Award could be made.
- [96] In view of the above I find that the Claimant's injury as a result of the accident caused him to be unable to work during the period between the date of the accident being November 2018 and October 2020.

## **GENERAL DAMAGES**

### **Pain and Suffering and Loss of Amenities**

- [97] Learned Counsel Mr. Marks submitted that in assessing pain and suffering and loss of amenities, the Court should be guided by the dicta of Lord Hope of Craig in Wells v Wells:

“...the amount of the award to be made for pain, suffering and loss of amenity cannot be precisely calculated. All that can be done is to award such sum within the broad criterion of what is reasonable and in line with similar awards in comparable cases as represents the Court's best estimate of the Plaintiff's general damages.”



- [98] Mr. Marks referred to the medical reports submitted by the Claimant and submitted that in making an award the Court should consider awards made in similar cases. Learned Counsel referred to the case of **CCAA Limited v Jeffrey** SVG HCVAP 10 of 2003 where an award of \$80,000.00 (Eighty thousand dollars) was made when the respondent suffered a traumatic amputation of his left thumb. In the case at bar the Claimant's middle finger was crushed but remained attached to his hand. Learned Counsel reminded the Court of the excruciating pain that the Claimant must have felt when the SUV was crushing his hand for a sustained period of about eight (8) seconds. His hand is now left with a grotesque keloid scar which he now keeps covered due to embarrassment. Further, should the Claimant seek to make a fist his middle finger sticks out in a vulgar gesture. Learned Counsel also noted that the sum awarded in **CCAA Limited v Jeffrey** for pain and suffering was \$40,000.00 and \$40,000.00 for loss of amenity. Counsel submitted that the court should award a sum of \$50,000.00-\$70,000.00 for pain and suffering.
- [99] In relation to loss of amenity, Learned Counsel submitted a similar sum of between \$50,000.00-\$70,000.00 in view of the permanent disability and the grotesque scar that will remain for the rest of his life. The Claimant has been restricted as a dancer and choreographer because of his limitations.
- [100] Learned Counsel Mr. Daniel in response also referred to the case of **Wells v Wells** that in determining the amount of the award under this head, the Court should have regard to comparable awards made in this jurisdiction and other jurisdictions with similar social and economic climate.
- [101] Learned Counsel also referred to the decision of Wooding CJ in the case of **Corniliac v St. Louis** where the Learned Chief Justice outlined the factors to be taken into account in making the assessment.
- [102] Learned Counsel also referred to awards made in cases both in St Vincent and the Grenadines and the OECS including the cases of **CCAA Ltd. v Julius Jeffrey** where the Court of Appeal reduced the award from \$250,000.00 to \$80,000.00. Mr. Daniel submitted that the injuries were more severe than in this case. In relation to the case of **Philmore Skepple v Joseph Weekes ANUHCVP (2009)** the Claimant was in intensive care for one week and could only consume liquids for the first six weeks after the accident, a sum of \$100,000.00. was awarded. Mr. Daniel urged the court to award a lower sum since the injury suffered by the Claimant was not as severe.

[103] The most recent case referred to by Mr. Daniel is the case of **Kyle Davy v Michael De Bique et al** SVGHCV2018/0032 where a global sum of \$50,000.00 was awarded in circumstances where Kyle Davy suffered injuries to his head, nerves in his face and legs.

[104] Learned Counsel urged the court to take into account the evidence of the Claimant's participation in the "Mr. SVG Pageant" which showed that the injuries he suffered did not result in loss of amenities as he claimed. Mr. Daniel submitted that the global sum awarded under this head should be \$30,000.00.

### **Discussion**

[105] It is not disputed that the Claimant experienced pain and suffering as a result of the accident. Both parties referred to the dictum of **Gordon JA in CCAA Ltd v Juluis Jeffery** where he stated:

"... It is in my view, a function of the law, as far as possible, to be predictable, given the infinite variety of the affairs of humankind. In the context of damages for personal injuries, there are certain principles which apply and there is a discretion which needs to be exercised. In the case of pain, suffering and loss of amenity, that discretion could be wholly subjective and hence unpredictable, or it could be precedent based, that is to say the trial judge having considered all of the evidence led before him, would take into account other awards within the jurisdiction and further afield. Awards of similar injuries would clearly be very helpful in relating the Claimant's injuries on a comparative scale. This is not a precise science, leaving much room for the trial judge's discretion."

[106] Similarly, Lord Hope in **Wells v Wells** in addressing the assessment of general damages stated:

"It has often been said that the assessment of damages is not an exact science that all the law can do is to work out as best it can, in a rough and ready way, the sum to be paid to the plaintiff as compensation for the loss and injury. There remains much truth in these statements despite the important advances which have been made in the search for greater accuracy. The amount of the award to be made for pain, suffering and loss of amenity cannot be precisely calculated. All that can be done is to award such sum within the broad criterion of what is reasonable and in line with similar awards in comparable cases as represents the court's best estimate of the Plaintiff's general damages."

[107] It is not in dispute that an award should be made under this head to the Claimant. The dispute relates to the quantum to be awarded. The approach to be taken by the court in determining the quantum is also not in dispute. The principles are well settled and are outlined in the decision of the Privy Council in **Scott v The Attorney General** at paragraph 17 as follows:

“General damages must be compensatory. They must be fair in the sense of being fair for the Claimant to receive and fair for the Defendant to be required to pay.”

[108] In **Livingstone v Rawyards Coal Co.** (1880) 5App Co 25, 39, Lord Blackburn outlined the principle as follows:

“Where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has suffered, in the former position, as he would have been in if he had not sustained the wrong.”

[109] The Courts have acknowledged that applying this principle in practice may not be easy. In **Andrews v Grand & Toby Alberta Land** (1977) 83DLR 452 at 475-476 the court stated:

“The mandatory evaluation of losses is a philosophical and policy exercise more than a legal or logical one. The award must be fair and reasonable, fairness being gauged by earlier decisions, but the award must also of necessity be arbitrary or conventional. No money can provide true restitution.

[110] Similarly, in **Heil v Parkin** 2000 EWCA Civ.84 para 23:

“There is no single formula for converting the pain and suffering, the loss of function, the loss of amenity and disability which an injured person has sustained into monetary terms.”

[111] Given the nature of the exercise to be undertaken by the Court, Lord Pearce in **H West & Son Ltd v Shepherd** 1964 AC 326 (364) stated that:

“The Court had to perform the difficult and artificial task of converting into monetary damage the physical injury and pain and to give judgment for what it considers to be a reasonable sum.”

[112] The injuries suffered by the Claimant were serious. When the collision occurred the wheel of the jeep was resting on his left hand. He had to hit on the jeep for the 2<sup>nd</sup> Defendant to reverse, for his hand to be set free. The 2<sup>nd</sup> Defendant drove him to the hospital in the same slow-moving

traffic. Her horn was not working so she could not indicate to other road users there was an emergency. The Claimant was hospitalized for twenty (20) days. During the period of hospitalization, he underwent two surgeries. The 1<sup>st</sup> Report of Dr. Woods an orthopedic surgeon dated 10<sup>th</sup> January 2019 shows that the Claimant continued to experience severe pain after the first surgery even though he received physiotherapy treatment. Upon further examination the Claimant was then diagnosed with a dislocation of the left thumb. A second operation was performed on the Claimant on the 6<sup>th</sup> December, 2018. This is consistent with the Claimant's evidence of the excruciating pain that he continued to experience even after the first operation. Further, Dr. Woods in his report stated that the Claimant continued to be treated for pain management until his discharge on 17<sup>th</sup> December, 2018.

- [113] In Dr. Woods' second report dated 9<sup>th</sup> November 2020, having examined the Claimant he opined that:

"He now has a large keloid scar to the dorsum of the left hand. The middle finger was fixed in hyperextension, with total inability to flex. The index ring and little fingers also had limited flexion."

- [114] Dr. Woods further opined that the Claimant required extensive surgery beyond the capacity of the services available in St Vincent and the Grenadines. He was of the view that it was unlikely that the Claimant will ever regain full and normal function of his left hand.

- [115] The Claimant also tendered a medical report of Dr. Grant, a Family Physician. Dr. Grant examined the Claimant on 21<sup>st</sup> February, 2022. He assessed the Claimant's situation as being he has a permanent disability of his left hand. This is due to :

"(a) Reduced left hand strength – including motions which require grasping, turning, holding or seizing;

(b) Reduced dexterity of the left hand- including movements which require pinching, picking or any movements which require the approximation of the fingertips;

(c ) An extensive hypertrophic keloid scar over the dorsum of the left hand.

- [116] Dr. Grant concluded that the Claimant will suffer from a permanent partial disability for the remainder of his life. He could not however quantitate the degree of permanent partial disability since that required management by appropriate specialist(s) which are not available in St. Vincent and the Grenadines.

[117] I was referred to a number of authorities in Saint Vincent and the Grenadines and the Eastern Caribbean.

[118] In computing the quantum of damage, the Court applied the dictum of Wooding CJ in **Cornilliac v St. Louis** 1995 7WIR491 in which he identified five factors which ought to be taken into account in his assessments:

- (a) The nature and extent of the injuries sustained.
- (b) The nature and gravity of the resulting physical disability.
- (c) The pain and suffering which has been endured.
- (d) The loss of amenities suffered; and
- (e) The extent to which the plaintiff's prospects have been practically affected.

[119] The Claimant's evidence of loss of amenity was that as a result of the injuries he could not take part in home and social activities as he did prior to his injuries. He can no longer do certain dance moves, household chores such as washing. He can no longer play volleyball or sports generally. Dancing has always been a passion and hobby. He is a dance instructor and choreographer. He is only able to do so now with significant limitation.

[120] Having regard to the injury to his hand, I agree that the Claimant has suffered some loss of amenity -such as playing volleyball, and he is now less able to do certain house-hold chores and serving as a dance instructor. I am reminded of the Claimant's evidence under cross-examination that he is right-handed and the injury is to his left hand. Also, that he did participate in "Mr. SVG Pageant" in 2019 in which he took part in a number of exercises which involved using both hands, including pulling his bodyweight on both hands. While I accept this evidence, I also accept the medical reports adduced by the Claimant. There was no evidence contradicting this evidence. Having carefully reviewed the evidence I am of the view that the Claimant has to some extent exaggerated his loss of amenities. As stated earlier his talent performance was the best. Mr. Marks submitted he was forced to be creative in view of the limitation resulting from the accident. I am however satisfied that the Claimant did suffer loss of amenity but not to the extent he suggested.

[121] The majority of the authorities referred to were decided more than ten (10) years ago. In the case of **Kyle Davy v Michael Debique** being the most recent, a global sum of \$50,000.00 was awarded for pain, suffering and loss of amenity. However, there was evidence in **Kyle Davy** in relation to loss of amenity and the injuries were not as severe as the Claimant. Kyle Davy was discharged after three (3) days, with no need for any surgery.

- [122] I am of the view that in all the circumstances an award of the sum of \$60,000.00 for pain and suffering and an award of \$20,000.00 for loss of amenity, a total sum of \$80,000.00 in this case is fair and reasonable.

### **Loss of Future Earnings**

- [123] Learned Counsel Mr. Marks submitted that at the time of the collision the Claimant was a graphic designer earning \$1100.00 per month. Based on the letter from his employer he appeared to have great prospect for promotion. Due to the injury he suffered as a result of the collision he is not able to continue this career path. The scope of his employment is now very limited. In estimating his loss under this head, the court must estimate his loss under this head. In so doing the court must apply the multiplicand/multiplier format.
- [124] In determining the multiplicand, Learned Counsel acknowledged that there is no evidence of what increase in salary the Claimant would have been expected to receive had he continued in his job. Learned Counsel referred to the case of **David Balcombe v Vaughn Lowman** SVGHCV 2006/0375 where the court found that the Claimant who was unemployed at the time of the accident was nonetheless entitled to a multiplicand of \$300.00 per month. Learned Counsel also referred to the case of **Cleos Billingsy v Kevon Jessie-Don Anderson et al** SVGHCV2013/0096 and submitted that it would be reasonable to assume that his salary would have increased by 35% - 40% therefore a multiplicand of \$400.00 x 12 = \$4,800.00 would be fair in the circumstances.
- [125] In relation to the multiplier, Learned Counsel submitted that the Claimant being thirty-five years old, given a normal working life of 65 years and taking into account the many contingencies, vicissitudes and imponderables or uncertainties of life, a multiplier of 15 would be reasonable in the circumstances. The sum awarded under this head should therefore be \$72,000 00
- [126] Learned Counsel Mr. Daniel in response submitted that the Claimant is not entitled to future loss of earnings and advanced three reasons being:
- (a) The Claimant is right-handed and the injury was to his left hand.
  - (b) At the time of his discharge from the hospital he was still employed at Advanced Graphics. It was the Claimant who ceased working.

- (c) The Claimant was employed on numerous occasions since his injury. Learned Counsel referred to the evidence of the Claimant various employment from October 2020 – August 2022. Further in one such instance his dismissal was due to an incident which necessitated investigation by the police.

### **Discussion**

- [127] It is well settled that a Claimant is entitled to damages for loss of future earnings when as a result of his injuries he is no longer able to be gainfully employed or his ability has been restricted. The onus is on the Claimant to adduce evidence that he is entitled to an award for future loss of earnings.
- [128] In his submissions Mr. Marks relied on the letter from Mr. Julian Payne of Advances Graphics and dated 8<sup>th</sup> January 2019. The particulars of the letter read:
- “He was employed at our Company since June 2018. His basic monthly salary ranges from \$1100 and up plus overtime.”
- [129] The job responsibilities of Edson Bynoe was entitled to in our business, included drafting on software such as designs for vehicles, banners, signs. Edson also carried out the task of installing signs at business places on buildings which required him using tools such as a drill, hammer, electric cutter, grinder and equipment maintenance. He's a good worker and his absence since the accident has made us lose a few dollars in business seeing it was a Christmas.”
- [130] Mr. Marks submits that as a result of the injury he was unable to use a hammer, drills, electric cutters and grinders. I pause to say no such evidence was led by the Claimant.
- [131] The Claimant agreed that he is right-handed and the injury was to his left hand. The Claimant did not lead any evidence that showed that he could not be gainfully employed or that his employment capability was reduced as a result of the injury. Indeed the evidence shows that from October 2020 he was gainfully employed and at least on one occasion he earned \$1,400.00 per month which was a higher salary than he received at Advanced Graphics.
- [132] While I agree that using some of the equipment at Advanced Graphics would be challenging for the Claimant, the evidence shows that the Claimant was able to gain employment at several other institutions. Further, while the various medical reports adduced into evidence by the Claimant states that the Claimant has suffered disability in his left hand, the reports do not



indicate how the disability impacted the Claimant's ability to continue in gainful employment. The Claimant has not shown that the injury has inhibited his future employment. I therefore make no order under this head.

#### **Future Medical Expenses**

- [133] Learned Counsel submitted that while Dr. Malcolm Grant suggested that further medical intervention may improve the Claimant's health, no estimate of costs was provided. Therefore, the Court should adopt the approach in the case of **Cleos Billingsy v Keyon Jessie-Don Anderson et al SVGHCV2013/0096** and award a nominal sum of \$5000.00.
- [134] Learned Counsel Mr. Daniel submitted that no evidence of quantum was stated, therefore the court should not make an award under this head.

#### **Discussion**

- [135] It is not disputed that the Claimant adduced evidence of the need for future medical care. Indeed, the reports of Dr. Woods and Dr. Grant both indicate that the Claimant requires further medical and such medical care was not available in St Vincent and the Grenadines but could be obtained in the neighboring islands of Barbados or Trinidad and Tobago. The reports did not give an estimation of the costs of such medical care. However, as stated in the Privy Council decision in **Greer v Alston Engineering Sales and Services Ltd** 2003 UKPC 46, the court may award a nominal sum where no evidence of the quantum is led. Having regard to the cost of air travel and professional fees the sum of \$5000.00 as suggested by Mr. Marks is a nominal sum. therefore award a sum of \$5000.00 under this head.

#### **Nursing Care**

- [136] Learned Counsel Mr. Marks submitted that the court should adopt the approach in **Cleos Billingsy** and make an award of \$500.00 per month for six months for nursing care.
- [137] In response Learned Counsel Mr. Daniel submitted that in **Cleos Billingsy** there was a greater need for care than in this case. He referred to paragraph 38 where the learned judge noted that the Claimant's independence and mobility were severely limited as both his elbow and ankle



were in casts. Mr. Bynoe was not so incapacitated. Learned Counsel also referred to the case of **Tishelle Browne v Lennox Israel et al** SVGHCV2006/0080 where Master Lanns (as she then was) noted at paragraph 14 that where a person needs to employ extra assistance in the home for cooking cleaning or laundering, the costs are recoverable. However, since the ancillary Claimant did not provide proof of the claim for domestic care, but since he would have needed some time to recuperate from the trauma, pain and discomfort associated with the accident, the court made a nominal award of \$300.00 per month.

[138] Learned Counsel also relied on the case of **Errol Edwards v Gabriel George** GDAHCV2011/0424 where the court stated at paragraphs 8 and 9 as follows:

“8. A court can make an award which includes provision for domestic services which the Claimant's injuries have incapacitated him from doing and for which he is forced to obtain assistance, provided of course, that those services arose out of the injury in relation to which damages are requested.

“9. The lack of evidentiary support made this award difficult. Admittedly, the nature of this type of award makes precise proof arduous. If, however a basis for reasonable ascertainment of the amount of damage is provided, the court can usually formulate an award. Medical evidence of the period of incapacity for instance and evidence of how, if any, the Claimant's usual mobility has been compromised and of the average cost of employing household labour are the types of evidence on which the court can place reliance. Those details were not pleaded or provided. Even the medical reports provided offered no useful assistance on the period of incapacity and on the Claimant's mobility during the affected period and as such any award under this head is speculative. I therefore make no award for domestic care.”

[139] Learned Counsel submitted that having regard to the above decisions, there is no evidence to ground an award for nursing care. The medical reports did not state any period of the Claimant's “incapacity” and inability to wash, cook and clean for himself. Further, the evidence shows that prior to the accident Ms. Charles did these chores for him prior to the accident although he did not live with them. Also since he was a guest, he would not have been expected to do chores in another person's house.

## Discussion

- [140] It is well settled that an award may be made for nursing care where as a result of the injury the Claimant is in need of such care. The onus is on the Claimant to adduce evidence to show that nursing care was necessary and for what period.
- [141] While the Claimant is right-handed and the injuries he suffered was to his left hand, the medical report shows that his left hand was severely injured. The nursing care was not only at Ms. Charles's home but the evidence showed that assistance was provided while he was in the hospital for approximately three weeks. It is not unusual for persons to provide personal care to persons who are hospitalized at the Milton Cato Memorial Hospital. I accept the evidence of the Claimant and Ms. Charles' that the Claimant had difficulty sleeping with the injured hand and required assistance turning and with his general personal care. The medical evidence shows that he required pain management after he was discharged.
- [142] I will therefore make an award of \$500.00 per month for a period of two months under this head being a total of \$1000.00.

## Interest

- [143] Mr. Marks submitted that interest should be awarded but no further submissions were made. No submissions were made by Mr. Daniel.

## Discussion

- [144] The Judgment Act addresses the issue of award of interest after judgment.
- [145] In **Alphonso v Ramnauth** 59 WIR a decision of the ECSC CA, Singh JA stated the general principles on which interests are awarded by the court as follows:

"The general principle is that interest ought only to be awarded to a plaintiff for being kept out of money which ought to have been paid to him. With regard to general damages, no interest should be awarded before judgment on loss of future earnings. On damages for loss of amenity and pain and suffering, interest should be awarded from the date of the service of the writ to the date of trial at the rate payable on money in Court placed on short term investment. Regarding special damages interest should be

awarded for the period from the date of the accident to the date of trial at half the above rate (see **Jefford v Gee** [1970] 1AER 1202.)”

[146] Like in **Alphonso v Ramnauth**, no evidence was led as to the rate of short-term investment.

[147] Applying the principles in **Alphonso v Ramnauth**, I make the following awards of interest:

(a) Special Damages - medical expenses at the rate of 2.5% per annum from the date of accident being the 28<sup>th</sup> day of November 2018 to the date of trial being the 10<sup>th</sup> day of March, 2025.

(b) Interest on general damages at the rate of 3% per annum from the date of service of the claim being 24<sup>th</sup> February, 2020 to the date of trial being the 10<sup>th</sup> day of March, 2025.

(c) Interest on the global sum at the rate of 6% per annum from the date of judgment until full payment of the sum.

### **Costs**

[148] The general rule is that the successful party is entitled to costs.

[149] In this case the Claimant succeeds against the 2<sup>nd</sup> Defendant, he was found to be 25% contributorily negligent. The Claimant is awarded prescribed costs to be reduced by 25%.

[150] The 1<sup>st</sup> Defendant successfully defended the claim brought by the Claimant against him. I will make no award of costs to the 1<sup>st</sup> Defendant. Apart from filing a defence he took no part in the trial. He filed no witness statement and adduced no evidence. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are father and daughter who had the same counsel. Also had the Defendants been successful each Defendant would not have been awarded separate costs.

[151] **IT IS ORDERED**

1. Judgment is entered for the Claimant against the 2<sup>nd</sup> Defendant.
2. The Claimant’s claim against the 1<sup>st</sup> Defendant is dismissed.
3. The Claimant is awarded the following sums as damages:
  - A. Special Damages:
    - (i) Medical expenses in the sum of \$3,190.00.

(ii) Loss of earnings in the sum of \$25,300.00.

B. General damages:

(i) Pain and suffering and loss of Amenity in the sum of \$80,000.00.

(ii) Nursing care in the sum of \$1000.00.

(iii) Future medical expenses in the sum of \$5000.00

The damages awarded are reduced by 25%.

The global sum awarded is \$85,867.50

C. Interest on special damages – medical expenses at the rate of 2.5% per annum from the date of accident being the 28<sup>th</sup> of November, 2018 to the date of trial being the 20<sup>th</sup> day of March, 2025.

D. Interest on general damages other than the sum awarded for future medical care at the rate of 3% per annum from the date of service of the claim being the 24<sup>th</sup> day of February, 2020 to the date of trial being the 10<sup>th</sup> day of march, 2025.

E. Interest on the global sum awarded at the rate of 6% per annum from the date of judgment until full payment of the sum.

The 2<sup>nd</sup> Defendant shall pay the Claimant prescribed costs on the global sum awarded.

**Gertel Thom**

High Court Judge (Ag.)



By The Court  
REGISTRAR'S OFFICE  
ST. VINCENT AND THE GRENADINES  
Registrar