

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
CIVIL**

Claim Number: SLUHCV2019/0147

BETWEEN:

SADOO AND SONS TRUCKING LIMITED

Claimant

and

AARON EMILIEN

Defendant

Consolidated with:

Claim Number: SLUHCV2021/0110

**MONICA PARRIS
as Administratrix of the Estate of Joel Walter Rodney Parris**

and

**[1] AARON EMILIEN
[2] SADOO AND SONS TRUCKING LIMITED
[3] GODFREY AURELIEN**

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mrs. Maureen John-Xavier for the Claimant in SLUHCV2019/0147 and the Second and Third Defendants in SLUHCV2021/0110, Sadoo and Sons Trucking Limited and Godfrey Aurelien

Ms. Ann-Alicia Fagan with Mrs. Shahida Charlemagne-Octave for the Claimant, Monica Parris in SLUHCV2021/0110

Ms. Alberta Richelieu with Mr. Alberton Richelieu for Aaron Emilien, the Defendant in SLUHCV2019/0147 and the First Defendant in SLUHCV2021/01

2022: September 21;	(Trial)
October 28, 31;	(Submissions)
2025: November 28.	(Decision)

JUDGMENT

- [1] **CENAC-PHULGENCE, J:** - This decision concerns two claims which have been consolidated. They arise out of an unfortunate and fatal motor vehicular collision which occurred on 5th June 2018 at about 5:50 p.m. along the Castries/Vieux Fort Highway ("the Highway") in the vicinity of Savannes Bay, Vieux Fort ("the accident").
- [2] The first claim is filed by Sadoo and Sons Trucking Limited ("Sadoo"). In this claim Sadoo claims damages against Mr. Aaron Emilien ("Aaron") for loss and damages suffered as a result of the accident which was allegedly caused by Aaron's negligence. The second claim is filed by Ms. Monica Parris ("Monica") in her capacity of the administrator of the Estate of Joel Walter Rodley Parris ("Joel" or "the deceased"). Joel was Monica's son. In this claim, Monica claims damages against Sadoo, Godfrey Aurelien ("Godfrey") and Aaron suffered as a result of the accident which was caused by their negligence, and which resulted in Joel's death. The defendants in both claims deny liability with the respective drivers laying the blame for the accident at the foot of the other.
- [3] The accident involved three motor vehicles, Toyota Granace Omnibus registration number HB7990 which was driven by the deceased ("the deceased's/Joel's bus"), a Toyota Granace Omnibus registration number TX493 driven by Aaron ("Aaron's bus") and a DAF Motor Truck registration number TB43 driven by Godfrey and owned by Sadoo ("the Truck"). At the time of the accident, the vehicles driven by the deceased and Aaron were travelling in a northerly direction towards Castries and the truck was travelling in a southerly direction facing Vieux Fort.
- [4] It is not disputed that the accident happened on the date and at the time alleged, and further that Sadoo is Godfrey's employer and that Godfrey was driving the Truck

as a servant or agent of Sadoo. Sadoo is therefore joined as a defendant in its capacity as Godfrey's employer and the owner of the Truck.

[5] The issues for determination are as follows:

- (A) Whether the accident was caused as a result of the negligence of Aaron and/or Godfrey? And if as a result of Godfrey's negligence, whether Sadoo is vicariously liable for the loss and damage claimed?
- (B) Whether Joel contributed to the accident? And if so, in what proportion?
- (C) Whether either claimant is entitled to the relief sought, and if so, what measure of damages should the Court award?

Sadoo's claim¹

[6] Sadoo alleges that on 5th June 2018 at approximately 5:50 p.m., Aaron recklessly, carelessly, negligently and dangerously drove his bus causing it to collide with the Truck which then caused the Truck to lose control, veer right and collide with the oncoming deceased's bus.

[7] Sadoo further alleges that, but for the impact to the Truck caused by Aaron's bus, Godfrey would not have lost control of the Truck, veer right and collide with the deceased's bus.

[8] Sadoo's version of how the accident occurred is as follows:
On the date in question, Aaron failed to maintain control of his bus and to remain on his left and proper side of the road and veered right into the Truck's lane colliding with the right front end of the Truck. As a result of the impact, Godfrey lost control of the Truck, which veered right facing south and then collided with the deceased's vehicle which was travelling in a northerly direction.

[9] Sadoo avers that the accident was caused solely as a result of Aaron's negligence and allege the following particulars of negligence against Aaron:

¹ Filed 29th March 2019, at p. 1 of Trial Bundle (TB) filed 7th September 2022.

- (a) Driving too fast, carelessly, recklessly, dangerously and negligently in all the circumstances of the case;
- (b) Failing to keep to his left and proper side of the road;
- (c) Colliding with the Truck while it was being driven on its left and proper side of the road;
- (d) Failing to keep any or any proper lookout or at all;
- (e) Failing to observe and/or heed the presence on oncoming traffic and in particular the Truck;
- (f) Swerving and/or driving towards the right side of the road and carelessly and injudiciously driving into the path of the Truck;
- (g) Failing to observe and/or heed the presence and/or approach of the Truck;
- (h) Failing to maintain proper control of the Truck;
- (i) Causing Godfrey to lose control and collide with the deceased's bus upon impact;
- (j) Failing to apply his brakes in time or at all so as to avoid colliding with the Truck;
- (k) Failing to sound his horn in time or at all;
- (l) Failing to stop, to slow down, to swerve, or so to manage or control his bus so as to avoid the accident;

[10] Sadoo relies on the maxim *res ipsa loquitur* -that is, they rely on the happening of the accident as evidence in itself of Aaron's negligence.

[11] Sadoo claims against Aaron special damages in the sum of \$177,500.00, interest and costs.

[12] In relation to this claim, Aaron denies that the accident occurred as a result of his negligence. He avers that it was the Truck that failed to keep as close as possible to his left side of the road and encroached onto his side of the road over the mid white line as Godfrey negotiated the right turn corner to Vieux Fort thereby causing the accident. Aaron avers that it is Sadoo through his agent Godfrey who was

reckless and negligent by failing to keep as close as possible to the left side of the road.²

Monica's claim

- [13] Monica, in her amended claim,³ brought in her capacity as administratrix of the Estate of Joel alleges that the accident occurred as a result of the negligence of Aaron and/or Godfrey. Monica alleges that Aaron negligently managed, operated or controlled his bus causing it to collide with the Truck which then collided with Joel's bus. She also alleges that Godfrey negligently managed, operated or controlled the Truck causing it to collide with Joel's bus.
- [14] In relation to Aaron, Monica alleges that he (i) failed to drive with due care and attention, (ii) drove too fast in the circumstances, (iii) failed to keep to the left and proper side of the road, (iv) failed to apply his brakes in time or at all so as to steer or control his bus so as to avoid the collision, and (v) failed to keep a proper lookout.
- [15] In relation to Godfrey, the particulars of negligence alleged are (i) failing to drive with due care and attention, (ii) failing to keep to the left and proper side of the road, (iii) failing to apply his brakes in time or at all so as to steer or control the Truck so as to avoid the collision, and (v) failing to keep a proper lookout.
- [16] Monica claims general damages pursuant to articles 609 and 988 of the Civil Code of Saint Lucia, special damages in the sum of \$93,950.88, interest and costs.
- [17] In relation to this claim, Aaron in his amended defence,⁴ denies the particulars of negligence pleaded against him. He alleges that as he approached a left corner of the Highway along Savannes Bay, he observed the Truck driven by Godfrey coming towards him on his side of the road. He tried to avoid the collision by moving further left but the Truck collided with the deceased's bus. He avers that he never collided

² See Defence filed 17th April 2019 at p 10 of TB.

³ See Amended claim and statement of claim filed 13th May 2021 at pp 26-34 of TB.

⁴ Filed 28th May 2021 at p 43-45 of TB.

with the deceased's bus. I note though that there was no allegation made by any of the claimants that Aaron collided with the deceased's bus.

[18] Aaron avers that he was not at all responsible for the accident and that the accident was caused solely as a result of Godfrey's negligence in that he (i) failed to keep to his left and proper side of the road to avoid the accident and (ii) failed to swerve or in any way move to his left and proper side of the road to avoid the collision. He avers that he is not responsible for any damages claimed by Monica.

[19] In relation to this claim, in their defence,⁵ Sadoo and Godfrey vehemently deny that the accident was caused by their negligence. They aver that the accident was solely caused by Aaron's negligence or alternatively that the deceased's loss of life and damages suffered were as a result of his own negligence and/or was significantly contributed to by reason of his own negligence.

[20] Sadoo and Godfrey repeat the particulars of negligence alleged against Aaron in their statement of claim and in addition say that he failed to approach a corner by remaining on his left and proper side of the road while negotiating a left bend. They deny the particulars of negligence pleaded by Monica in relation to Godfrey and admit the particulars of negligence pleaded in relation to Aaron.

[21] The particulars of negligence or contributory negligence alleged in relation to the deceased are as follows:

- (i) Racing with Aaron;
- (ii) Failing to drive a safe distance or allow for sufficient space from Aaron's bus in order to enable him to take into account and be prepared for all contingencies and sudden occurrences on the road;
- (iii) Driving too fast, carelessly, recklessly, dangerously and negligently in all the circumstances of the case;

⁵ Filed 4th June 2021 at pp 37-41 of TB.

- (iv) Failing to keep to his left and proper side of the road whilst negotiating a bend;
- (v) Colliding with the Truck driven by Godfrey whilst it was driving on its left and proper side of the road;
- (vi) Failing to keep any proper lookout or at all;
- (vii) Failing to observe and/or heed the presence of oncoming traffic and in particular, Godfrey;
- (viii) Swerving and/or driving towards the right side of the road into Godfrey's path and carelessly and injudiciously driving onto the path of Sadoo;
- (ix) Failing to observe and/or heed the presence and/or approach of Godfrey and failing to maintain a sufficient distance whilst driving behind Aaron's bus to enable him to take evasive action;
- (x) Failing to maintain proper control of his bus;
- (xi) Failing to apply his brakes in time or at all so as to avoid colliding with Aaron's bus;
- (xii) Failing to sound his horn in time or at all;
- (xiii) Failing to stop, to slow down, to swerve, or to manage or control his bus to avoid the accident;

[22] Sadoo and Godfrey aver that the Police Report on which they rely, attributes fault for the accident solely at the feet of Aaron. They aver that any loss and damage suffered by the deceased is not as a result of their negligence and as such they are not liable to the deceased's estate. Without admitting any liability, Sadoo and Godfrey put Monica to strict proof of the damages claimed.

The Law

[23] The starting point in matters of negligence in Saint Lucia is articles 985 and 917A of the **Civil Code of Saint Lucia**⁶ ("the Code"). Article 985 provides:

"Every person capable of discerning right from wrong is responsible for damage caused either by his or act act, imprudence, neglect or want of skill, and he or she is not relievable from obligations thus arising."

⁶ Cap 4.01, Revised Laws of Saint Lucia, 2020.

[24] Article 917A states:

“Subject to the provisions of this article, from and after the coming into operation of this article the law of England for the time being relating to ... torts shall *mutatis mutandis* extend to Saint Lucia, ...”

[25] In relation to contributory negligence, the relevant article is 989D which states:

“989D (1) In this article—

...

“**fault**” means negligence, breach of statutory duty or other duty or other act or omission which gives rise to a liability in tort or would, apart from this article, give rise to the defence of contributory negligence.

(2) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant’s share in the responsibility for the damage.

...

(5) Where any person dies as the result partly of his or her own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the succession under article 609, the damages recoverable would be reduced under paragraph (2) of this article, any damages recoverable in an action brought for the benefit of the wife or husband, parent and child of the person under paragraphs (2) and (3) of article 988 shall be reduced to a proportionate extent.”

[26] It is trite law that in order for a claimant to succeed in a claim for negligence, he must prove that (i) the defendant owed him a duty of care; (ii) the defendant breached that duty; (iii) the breach caused damage and (iv) the damage was not too remote.

[27] The duty of care required of a driver of a motor vehicle as stated in the case of **Cheryl Edwards Administrator of the Estate of Janique Lewis v Ethel Mills**⁷ was followed in the recent Court of Appeal decision of **Lisa Vernita Noel v Neil Noel**.⁸ At paragraph 62, Farara JA [Ag.] said:

⁷ ANUHCv1998/0168, (delivered 28th November 2002, unreported).

⁸ SLUHCvAP2024/0012, (delivered 10th March 2025, unreported)

“...A court must also consider other aspects of the driver’s driving leading up to and at the time of the collision in determining ultimately whether aspects of his/her driving was below the standard of a prudent driver in the circumstances and therefore in breach of their duty of care to other road users, including the driver of the other vehicle involved in the collision. This is because **all drivers of motor vehicles owe in law a duty of care to other users of the road, including pedestrians, within the area of potential danger and who the driver objectively should foresee the risk of injury or damage if he/she did not exercise reasonable care. The exercise of reasonable care would require the driver to always keep proper look out when driving so as to determine whether it is safe to proceed or not to proceed, to drive at a speed and in a manner such that he/she would be able to stop their motor vehicle when confronted with the presence of another vehicle or cyclist or pedestrian road-user, to sound the horn to alert other road users of his/her approaching vehicle, to slow down or to bring the vehicle to a stop so as to avoid colliding with another vehicle or other road user, and to take such other prudent and reasonable evasive action to avoid a collision. ...**” (my emphasis)

[28] It is accepted that all the drivers, Godfrey, Aaron and Joel owed a duty of care to each other. This is supported by the learned authors of **Halsbury’s Laws of England**⁹ where they state:

“When two persons on the highway are so moving in relation to one another as to involve the risk of collision, each owes to the other a duty to move with due care, and this is true whether they are both in control of vehicles or both proceeding on foot, or whether one is on foot and the other controlling a moving vehicle. ... **The duty is to use such care as is reasonable**, and where a driver is faced with the sudden emergency he can only be expected to do that which an ordinary reasonable man would do. The duty is owed only to such persons as are within the area of potential danger and to whom the defendant could reasonably foresee the risk of injury if he or his employee failed to exercise care.” (my emphasis)

[29] It is the law that both drivers owed a duty of care to each other and to other road users. The standard expected of each of the drivers in this matter would be that of a competent and experienced driver as established in **Nettleship v Weston**.¹⁰

⁹ 10th ed, Vol. 34 at para, 44.

¹⁰ [1971] 3 WLR 370.

[30] The Court has to determine who caused the accident. In relation to causation, the Court in **Mendy Phillip v Sheldon Gaston et al consolidated with Julianne Fadlin et al v Sheldon Gaston et al**¹¹ at paragraph 85 said:

“With regard to proof of causation, it is well established that damage suffered by the plaintiff will be held to have been caused by the defendant’s negligence if the plaintiff proves on a balance of probabilities or by reasonable inference that the negligence substantially contributed to the damage or to the risk or danger thereof. Such negligence may either operate alone or concurrently or successively with other factors in such a manner as to form a component of one compound or cumulative cause.”

[31] I will now examine the evidence in this matter. Issues A and B will be dealt with together.

Discussion and Analysis

Issue A: Whether the accident was caused as a result of the negligence of Aaron and/or Godfrey? And if as a result of Godfrey’s negligence, whether Sadoo is vicariously liable for the loss and damage claimed?

Issue B: Whether Joel contributed to the accident? And if so, in what proportion?

[32] There were three witnesses who were slated to give evidence in relation to their account of the accident. Two of the witnesses, Godfrey and Aaron gave evidence and were cross-examined. The other witness, Aloysius Ambrose did not attend the trial, and his witness statement was therefore struck out.

The Evidence

Mr. Innocent Sadoo (“Mr. Sadoo”)¹²

[33] Mr. Sadoo is the managing director of Sadoo. Most of his evidence in his witness statement closely mirrors Sadoo’s averments in its statement of claim as to how the accident occurred and that this accident was solely caused by Aaron’s negligence. In cross-examination, Mr. Sadoo admitted that he did not personally witness the

¹¹ SLUHCv2016/0203 and SLUHCv2016/0283, (delivered 30th March 2020, unreported).

¹² Witness Statement at p 55 of TB.

accident and accepted that he could not give a version of how the accident happened.

Mr. Godfrey Aurelien (“Godfrey”)¹³

[34] Godfrey at the time of trial was 57 years old. He is the holder of driver’s licence and at the material time had been driving for 27 years. He considers himself to be a prudent driver. Godfrey began working with Sadoo as a driver in June 2011. Prior to this he was employed with another company driving trailer trucks. He says he knows the Highway very well as he frequently travels on it daily with the Truck which is used to haul containers. He began driving the Truck about three years prior to the accident.

[35] This is Godfrey’s recollection of that fateful day, 5th June 2018:
On that day, at about 4 p.m. a 40-foot container was placed on the 40-foot chassis of the Truck and he left Port Castries at about 4:15 p.m. accompanied by a young man known to him as ‘Spolier’ who was seated in the front left passenger seat.

Godfrey says when he left Port Castries he was driving at a slow pace because the load was heavy. The traffic was very light. There were visible road markings demarcating the lanes. Although the sun was about to set, Godfrey says visibility was still clear.

[36] Godfrey gives an account of how the accident occurred. This is what he says:
Just after the incline after the bridge in the Savannes Bay area, Godfrey says he was negotiating a right bend when he noticed Aaron’s bus which was a white Toyota Minibus travelling towards him in his lane, coming from the opposite direction on the right side of the road which is his left and proper side. He says when he saw Aaron’s bus, he immediately slowed down the Truck. Aaron’s bus veered to his left side of the road and the rear end of his bus collided with the right front side of the Truck.

¹³ Witness Statement at p73 of TB.

- [37] He continues that as a result of the impact, the front wind screen shattered, and the front tyre blew off. He then lost control of the Truck, and it travelled to the right side of the road. Suddenly he heard another loud impact and noticed the Truck pushing another bus (the deceased's bus) towards the terrain on the right side of the road facing Vieux Fort. Godfrey says he noticed that Aaron's bus which had made contact with the Truck started spinning and went off the road surface on the left. It then travelled right onto the road surface and went left again until it came to a stop off the pitch surface of the road with its front facing in a southerly direction.
- [38] Godfrey's evidence is that but for Aaron's bus colliding with the Truck, he would not have lost control of the Truck, veer right and then collide with the deceased's bus. He says the accident was caused by Aaron's negligence or alternatively, was as a result of the deceased's negligence or contributory negligence.
- [39] After the Truck came to a stop, Godfrey came out of the Truck. Whilst on the scene he met PC 485 Houry, the Police Investigator who cautioned him and took a brief explanation from him as to how the accident occurred.
- [40] On Wednesday, 20th June 2018 at about 9:00 a.m., Godfrey says he revisited the scene of the accident with Mr. Sadoo, Aaron, the brother of the deceased, a Justice of the Peace, the investigating Officer, PC Houry and other police officers.
- [41] PC Houry cautioned him and Aaron, and recorded a brief explanation from Godfrey which was read over to him and he signed. He marked out the point where the Truck made contact with the deceased's bus which was POI 3. The police officer also made a marking in relation to the impact with the deceased's bus and the Truck which was POI 4.
- [42] PC Houry then took measurements which he read over to Godfrey who indicated that he was satisfied with the measurements. PC Houry then invited Godfrey to the station to record a more detailed statement from him. Godfrey reiterates that it is

Aaron who caused the accident and the deceased contributed to his loss and damage.

Cross-examination by Mr. Alberton Richelieu ("Mr. Richelieu")

[43] In cross-examination, Godfrey said that he had been driving trucks for about twenty-five (25) years. When he was asked by Mr. Richelieu whether he went more to the right as he got around the corner near Savannes Bay, Godfrey said 'No. You would have to stick more to the left if you are going right.' He did not agree with Mr Richelieu that it would be more difficult to manoeuvre a trailer around a corner than a car and said that may be for another driver but not him.

[44] Mr. Richelieu asked Godfrey whether he recalled what he told the police officer on the day of the accident as to how the accident happened and he said he did not remember as he was in shock at the time and just told the police something. He was referred to the statement which he gave the police on 8th June 2018 in which he said:

'I noticed two vehicles coming side by side heading to Castries. The white bus was on my side. I was a bit shock to see [it] on my side in the corner. The white bus continued and hit the truck and causing the truck to go out of control. The other bus was passing on the right and the truck hit the bus and came to a stop.'

[45] Godfrey was asked whether the explanation he gave on 20th June 2018 when they returned to the accident scene was different from what he said the first time he gave an explanation to which he responded that he did not accept that because he was in shock. He then said he could not recall whether he had given two different explanations on the two different days.

[46] Mr. Richelieu referred Godfrey to the statement which he gave recorded at paragraph 11 of PC Houry's witness statement. In that statement, Godfrey is recorded as having said the following which he said in cross-examination was the correct statement:

"I was heading to Vieux Fort, when I got to the corner I saw a white bus on the left side of the road coming on my side. The bus was coming across

spinning and the back of the bus hit the front of the Truck. It caused the bus to go a little on the right and another bus came and hit it on the truck.”

- [47] Godfrey agreed after having the two accounts put to him that his second statement was the correct version and attributed the difference in the accounts to him being in shock and traumatised on the day of the accident.
- [48] In cross-examination, Godfrey was clear that when Aaron’s bus hit the Truck, it caused the Truck to go out of control and then the other bus hit the Truck. Godfrey was adamant that he never left his side of the road and went onto the other side. He says the debris was on the left side of the road facing Castries, but we will see that PC Houry in his evidence says the debris was all over the road. It was put to him that Aaron said the accident happened on his side (the left side facing Castries) to which Godfrey replied ‘That’s what he said. That is not what happened.’

Cross-examination by Ms. Ann-Alicia Fagan (“Ms. Fagan”)

- [49] Godfrey agreed with Ms. Fagan that a trailer truck is wider than an ordinary car but said that this would not prevent him from driving on one side of the road. Although he said he had not measured it, he said he knew that the trailer truck is wider than a minibus. Godfrey said he had a container behind the Truck which was heavy. Godfrey said the road was marked on the day of the accident. Ms. Fagan suggested to Godfrey that the road where the accident happened is relatively narrow to which he responded that the road was large enough for two vehicles and it was not narrow.
- [50] Godfrey said when Aaron’s bus hit the front of the Truck, the windscreen shattered and he said he could not see anything. The Truck then travelled to the opposite side of the road and then he heard a loud bang. He was asked whether he heard the impact before he actually saw the second bus and he said that when the first impact happened it did not take a long time for the second to happen. It happened fast.
- [51] Ms. Fagan challenged Godfrey that he would not be in a position to see whether the deceased’s bus was speeding or whether it was driving too close to Aaron’s bus

and he responded that he could not say if the deceased's bus was close, but he knew it was going fast.

[52] Godfrey was very frank and forthright with his responses. I accept his evidence that he is familiar with the road and that the trailer truck although wider than a minibus would not impede him driving on one side of the road. What I understood Godfrey to be saying is that the trailer truck did not have to leave its side to negotiate a corner as Counsel for Monica suggested. In fact, from my observations on the day of the site visit on 6th October 2022, I am satisfied having seen the road and traffic including at least two trailer trucks traverse the road, that the area where the accident occurred is wide enough to accommodate both lanes of traffic comfortably.

[53] Although Mr. Richelieu pointed out the differences in the statements given by Godfrey on the day of the accident and at the subsequent visit to the scene, and while they appear different, I have noted that there is some consistency in that both statements speak to Aaron's bus being in the left lane facing Castries coming towards the Truck and the back of Aaron's bus hitting the front of the Truck. Where there appears to be the inconsistency, is in what transpired after Aaron's bus hit the Truck. In the first statement Godfrey said 'the other bus was passing on the right, and the truck hit the bus and came to a stop' and in the second statement, he says it (the truck) caused the bus to go a little on the right and another bus came and hit it on the truck. The second statement which Godfrey said was the correct version seems to suggest that Aaron's bus went to the right after he hit the Truck and then the deceased's bus came and hit Aaron's bus onto the truck. The first account appears to be more consistent with what Godfrey says in his witness statement which is that as a result of the impact with Aaron's bus, he lost control of the Truck and travelled to the right side of the road. He suddenly heard another loud impact and noticed the Truck pushing the deceased's bus towards the terrain on the right side of the road. In both these accounts, the Truck is seen to have hit the deceased's bus.

[54] I can accept that this accident occurred very quickly and if Godfrey says the windscreen had shattered and he could not see anything, then it is highly unlikely that he would have been able to see exactly what transpired after the Truck was hit. His evidence in relation to what transpired at that point appears to be somewhat unreliable given what he described.

Mr. Aaron Emilien (“Aaron”)¹⁴

[55] Aaron has been a taxi driver since 1995 and at the time of the accident had been driving for about twenty-three (23) years. He says he is very familiar with the Castries/Vieux Fort Highway. He travels the road on a regular basis about five (5) days a week and on occasions twice daily depending on the number of transfers he does from the north of the island to the airport in Vieux Fort.

[56] Aaron says at about 10:30 a.m. on 5th June 2018, he picked up passengers to take them to the airport in Vieux Fort. Whilst in Vieux Fort, he met the deceased who was also a taxi driver and who he describes as ‘like his brother’. They had lunch at Empire 758 and left there at 5:00 p.m. and then headed north to Castries. Aaron says he got in his vehicle first and went his way.

[57] This is Aaron’s account of that fateful day:
When he got to Savannes Bay before taking the sharp corner, a left-hand bend, he realised a truck was heading in his direction on his side of the road. He says he tried to avoid the truck, but it continued coming towards him and then he heard a loud impact to the rear of the bus. He says his vehicle remained on the left side of the road. He says as a result he immediately auto locked the bus and then it started spinning and went into the grass on the left side of the road facing Castries with its front facing Vieux Fort.

[58] Aaron says he got out of the bus with the intention of going to Godfrey but then he saw a front bumper on the road which did not belong to his bus. He then saw that

¹⁴ Witness Statement at p. 97 and Supplemental Witness Statement at p 114 of TB.

the Truck was resting on the front right of a bus which was off the pitch surface of the road on the left side of the road facing Castries. The Truck was pinned into the bus which he then realised was Joel, his friend's bus.

[59] Aaron says before the accident happened and while he approached the corner, he did not realise any vehicle behind or ahead of him. He says he was weak and traumatised after the accident. He says when he got to his senses, he noticed that the Truck that collided with the back of his vehicle was positioned across the road and occupied both lanes with its front facing towards the right side of the road facing the direction of Vieux Fort. When he first saw the Truck approaching him, Aaron says it appeared to be travelling more on the right side of the road which was on his side.

[60] Aaron says on the accident scene PC Houry approached him and asked him whether he recalled anything and he told him he was too traumatised. He saw him approach Godfrey and took a brief explanation from him which he wrote on a blank piece of paper.

[61] On 12th June 2018, he met PC Houry at the Vieux Fort Police Station, and he gave a statement to him. Aaron explained: "I was coming from Vieux Fort and was heading to Castries. When I came around the corner in Savannes Bay I noticed a truck towards the center of the corner and the next thing I felt was an impact to the right rear of my vehicle."

[62] On 20th June 2018, he says he and others including Godfrey were invited to revisit the scene of the accident. PC Houry attempted to get a statement from Godfrey but Mr. Sadoo intervened and Aaron's lawyer had to indicate that Mr. Sadoo could not tell Godfrey what to say. After this he said Godfrey gave a brief explanation which was different to the explanation he gave on 5th June 2018. He says they were asked to show the POIs and he disagreed with those pointed out by Godfrey. According to Aaron a whole set of measurements were taken. He says the officer indicated that the Truck hit the deceased's bus on the right side of the road facing Vieux Fort which

is inconsistent with the POI shown by Godfrey where he says he collided with the deceased's bus.

[63] Aaron says he never drove his bus side by side with any other vehicle on that day. He says when he drove around in Savannes Bay he did not notice any other vehicle travelling behind him; he was on the left side of the road heading to Castries at all times; he was always on his proper side on the road; he never moved to the other side of the road after the accident. He also says that when they left Vieux Fort, he did not wait for Joel to get into his bus. He jumped into his bus and drove off immediately.

[64] Aaron says he did not cause the accident and is not liable for and damages claimed by Sadoo or in the alternative he puts Sadoo to strict proof of its loss. He says his bus was a total loss due to Godfrey's negligence. He did not claim any damages for the loss of his bus.

[65] Interestingly, Aaron says when the measurements were being taken, they appeared to be very confusing because of the number of measurements being taken. Alternatively, he says the measurements in the Police Report do not assist in understanding the true nature of the accident, something he said he brought to PC Houry's attention. There is no evidence that the measurements were disputed however.

[66] In a supplemental witness statement filed in Monica's claim, Aaron says he is not responsible for Joel's death. He says further that he moved further left to avoid the collision when the Truck hit the rear side of his bus and caused his bus to go out of control and stopped on the left side of the pitched surface of the road facing Castries.

[67] Aaron says he never lost control of his bus. He also says that he was never racing with the deceased although this was not an allegation of negligence made in relation

to him in any of the pleadings. He says Joel's death was solely caused by Godfrey's negligence.

[68] In cross-examination, Aaron admitted that he and Joel would 'hang out' frequently, but mainly at each other's homes, not at bars. However, his evidence in cross-examination revealed that prior to the accident, he and Joel had spent time at two bars and were headed to a third in Dennerly called Falco's Place when the accident occurred.

[69] The cross-examination revealed further that he and Joel had agreed to meet in Vieux Fort. He got to Vieux Fort about one and half hours before Joel and waited for him at a bar which is popular with taxi drivers. Aaron says after this they went to another bar called Empire 758. And the intention was to then stop at Falco's Place in Dennerly. Joel had left his bus by the first bar and after they left Empire 758, Joel picked up his bus by the first bar.

[70] Aaron says in cross-examination that after Joel went to his bus, he did not check to see that Joel moved off before he proceeded to drive. He explained that Joel was driving his bus when they went to Empire 758 and when Joel stopped to go towards his bus, he (Aaron) drove off. Aaron's behaviour here is quite interesting as he describes Joel as 'like a brother', they were heading to another bar together and yet he did not even check to see if Joel was on route to their next location.

[72] Aaron agreed that the road where the accident happened was flat, it was marked with white lines in the middle and he agreed that of coming from Castries, the accident happened at the top of the hill/incline just as you get to the corner.

[73] In cross-examination, Mrs. Maureen John-Xavier ("Mrs. John-Xavier"), Counsel for Sadoo and Godfrey suggested to Aaron that when he had been asked for a statement on the day of the accident, he had informed the police officer that he was too weak and traumatised to which he answered no. When he was shown his witness statement at paragraph 19, he said he recalled giving a statement on that day. He was asked whether his evidence at trial contained information that was not

correct, and he again said he did give a statement on the day of the accident. That is quite contrary to what is stated in his witness statement.

- [74] Aaron was shown the statement he gave to the police on 12th June 2018 where he said, "He took my driver's licence information from me and asked me to tell him what happened. I told the officer that I cannot recall what happened at the time."¹⁵ His response was that he 'did not give a full statement. It was a rough statement.'
- [75] In that statement, Aaron mentions that the investigating officer approached him again and asked him if he remembered anything about the accident and he told him what he remembered which he said the officer wrote on a blank piece of paper. That statement though is dated 6th June 2018 which was the following day and not the date of the accident. Aaron denied that he and Joel were speeding.
- [76] When questions were put to him in relation to debris and the POI identified by Godfrey, Aaron denied that (i) there was debris from the Truck in its lane directly in front of the POI; (ii) there was any debris in front of the POI; (iii) the gorge marks started on the left side of the road and continued towards the right side of the road facing Vieux Fort; (iv) immediately after the impact, all the glass and debris was in front of the POI , and (v) the tyre marks from his vehicle started from the left side of the road and went towards the right side of the road.
- [77] Mrs. John-Xavier referred Aaron to paragraph 8 of his witness statement where he stated that when he came out of his bus after the accident, he realised that the Truck had crossed the midline and asked him whether he only noticed the Truck had crossed the midline after the impact. Aaron responded that he noticed before the accident happened. Mrs. John-Xavier then asked him whether what was in his witness statement was not correct and he did not respond. This evidence is critical because Aaron says he noticed the Truck had crossed the midline after the impact and he came out of his bus but then says he noticed this before the accident

¹⁵ P 339 of TB.

happened. It must be remembered that his version of how the accident happened is that he saw the Truck heading in his direction on his side of the road.

[78] Aaron did not appear to be forthright with some of his responses. My observation of him during cross-examination is that he seemed very guarded and cautious in how he responded. Like in Godfrey's case, I accept that this accident happened quickly and Aaron may not have recalled everything about how the accident happened. I note however that Aaron was not able to recall anything about the accident on the scene yet he paid enough attention to recall that Godfrey gave a statement which was recorded on a blank paper.

[79] It is the case that Godfrey and Aaron have two diametrically opposed versions of how this accident happened. Despite this and Aaron's statement that he told the police officer that the measurements were confusing and that they were many, neither party sought to provide any assistance to the Court by way of expert testimony. In closing submissions, I noted that Sadoo at paragraph 29 of its submissions says in order to assist the Court, Sadoo has provided sketches of important aspects of the physical evidence, drawn to scale, taken from the measurements provided in the witness statement of the Investigating Officer. They say the sketches form part of the submissions and are heavily relied on. These drawings are placed in the middle of Sadoo's submissions, but these were never part of the evidence on record, they were not ordered by the Court, there is no indication of their author and the other parties in the matter did not get the opportunity to address the drawings. In the circumstances, I am constrained to pay no regard to these drawings even if they may have been very helpful had they been introduced in a manner consistent with the **Civil Procedure Rules**.

[80] Being faced with the dilemma of the opposing versions of how the accident occurred, I will now examine the evidence of PC Houry and the contents of the Traffic Accident Report.

PC 485 Houry (“PC Houry”)¹⁶

- [81] PC Houry was on duty at the Vieux Fort Traffic Department when he received information concerning the accident. The area where the accident occurred is a sharp left hand bend corner facing north. PC Houry proceeded to the scene in the direction of Castries and on arrival he observed the Truck stationary with a forty-foot container hoist on a forty-foot chassis which was positioned partially across the left side of the road and the tractor head almost completely off the road facing west. The tractor head was resting on the right front edge of the deceased’s bus which was completely off the pitch surface of the road on the left side facing in the direction of Castries in the bushes.
- [82] The Truck and the deceased’s bus received extensive damage to their front. There was debris scattered all over the road surface and the deceased was trapped in the driver’s seat of his bus. Aaron’s bus was on the left side of the road facing north with its front facing south. This vehicle received serious damage to its right rear end with its rear door completely detached. There were tyre impressions on the pitch surface of the road. It appeared to be striation marks which started on the right side of the road facing Castries and continued to the left side of the road facing the same direction. He explains that striation marks are tyre marks with parallel lines caused by particles on the road surface and a rotating tyre. In cross-examination, Mr. Richelieu said that his understanding was that the striation marks were directly behind the Truck; that they followed the Truck to which PC Houry responded ‘no’. PC Houry says he also saw tyre marks on the edge of the road near the area where Aaron’s vehicle was stationary.
- [83] PC Houry met with Godfrey at the scene and got a brief explanation of how the accident happened from him. PC Houry also met Aaron and also asked him whether he could give a brief explanation as to how the accident happened. Aaron said he was not able to remember what happened. A notice of intended prosecution was served on both Godfrey and Aaron.

¹⁶ Witness Statement at p 73 of TB.

[84] On 7th June 2018, PC Houry recorded a statement from Godfrey at the Vieux Fort Police Station. On 12th June 2018, a statement was recorded from Aaron. On 20th June 2018, PC Houry says he revisited the accident scene with Godfrey and Aaron. Also in attendance were Aaron's lawyer at the time, a Justice of the Peace and other traffic personnel. He read Aaron's brief explanation to him in the presence of Godfrey, and he confirmed that it was true and correct. He then took a brief statement from Godfrey in the presence of Aaron.

[85] The markings which were made on the day of the accident were still visible and PC Houry explained them to all the parties. He then asked Godfrey and Aaron to identify the point of the road where they believe that their vehicles came into contact with each other. They each pointed to two different points. Godfrey's point was marked as point of impact number 1 (POI 1) and that of Aaron's as point of impact number two (POI 2).

[86] Godfrey was also asked to identify the point where he came into contact with the deceased's bus and that was marked as point of impact number three (POI 3). PC Houry says based on his observations, Godfrey's truck made contact with the deceased's bus on the right side of the road facing Vieux Fort and this was marked as point of impact number 4 (POI 4). PC Houry details all the measurements which were taken which are quite extensive. I will refer to the relevant measurements which are essential to making the salient findings at the appropriate time.

[87] PC Houry says that as a result of his investigations he concluded that the accident was caused as a result of the negligence and dangerous driving of Aaron. He gives his explanation as to how the accident occurred:

"Aaron's bus and the deceased's bus were travelling in a northerly direction towards Castries along the Vieux Fort Highway near Savannes Bay. The Truck driven by Godfrey was driving in a southerly direction towards Vieux Fort. Investigations reveal that Aaron failed to maintain his vehicle on the left and proper side of the road. He injudiciously drove his vehicle on the right side of the road facing Castries in the path of the Truck thereby colliding with the right front end of the Truck. As a result of the collision, the Truck lost control, veered right and collided with the deceased's bus which

was travelling on its left and proper side of the road towards Castries pushing it off the pitch surface of the road.”

- [88] As a result of his findings, PC Houry says he charged Aaron with the offence of causing death by dangerous driving. At the date of the trial, the matter was pending in the High Court.
- [89] PC Houry in cross-examination said he observed gouge marks on the road and indicated that these were caused by the rim of the Truck tyre. Mr. Richelieu questioned PC Houry on his use of the triangulation method and pointed out that he had not indicated why he used the method and this was accepted by PC Houry. He also suggested to him that he had not indicated how that method would assist in understanding the measurements.
- [90] Mr. Richelieu quite rightly in my view pointed out to PC Houry in cross-examination that in the absence of any measurements from the secondary points of reference to either side of the road, the Court would have no idea where these points were. PC Houry did not accept this but without plotting all the measurements in the appropriate computer programme, it is impossible to know exactly where the secondary reference points are. I am of the view that in the circumstances, these points are of very little use to the Court in carrying out its exercise of determining how the accident occurred. The primary reference points are a little easier as they are the poles and easily identifiable.
- [91] PC Houry agreed that if the POI 3 to the LSR facing Vieux Fort is 1.55 m, that point would have been on Godfrey’s left side of the road facing Vieux Fort. PC Houry accepted Mr. Richelieu’s suggestion that when Godfrey pointed out POI 3 as being the point at which he came into contact with the deceased’s bus, this could not be correct.

Submissions

- [92] Mr. Richelieu in his submissions stated that the reasonable inferences to be drawn from the measurements in relation to the drag marks and gouge marks was that all the gouge marks and drag marks were in Aaron's lane. He says it is reasonable to infer that the gouge marks were caused after the tyre blew and the rim dug into the road.
- [93] He submitted further that from the objective facts and the inference to be drawn therefrom, it is clear that the accident took place in Aaron's lane and it would be wrong to accept the parties' explanation that they were hit in their lane simpliciter without carrying out a clinical objective analysis of the evidence before the Court.
- [94] Mr. Richelieu submits that it is clear from the evidence that Godfrey failed to exercise the duty of care expected of a reasonable prudent driver and failed to keep to the left side of the road facing Vieux Fort thereby causing the collision of the fateful day.
- [95] In the alternative, Mr. Richelieu submits that the Court may find an element of contributory negligence on the part of both drivers.
- [96] Mrs. John-Xavier submitted that considering the evidence of Godfrey and PC Houry having remained wholly unchallenged and the physical evidence on the ground at the scene of the accident, that the Court should find on a balance of probabilities that the point of impact identified by Godfrey as POI 1 is the correct point of impact. She submitted that this is supported by the location of the striation/drag marks, the debris from the Truck and the back door, tire and grill from Aaron's bus. This physical evidence Counsel posited is the DNA of how the accident occurred and is wholly inconsistent with the POI 2 identified by Aaron.

Analysis of evidence (in particular the measurements)

- [97] The measurements contained in the Traffic Accident Report will be analysed to better understand and determine the more probable manner in which this accident occurred. While I agree with Mr. Richelieu that the use of the primary and secondary reference points and the triangulation method and the measurements associated

with them referred to by PC Houry do not on their own assist in understanding how this accident happened, I am of the view that there are sufficient other measurements to enable the Court to come to a conclusion.

POI 3 and POI 4

[98] POI 3 is where Godfrey says the Truck and the deceased's bus collided. This POI finds itself on the left side of the road facing south about 1.55 metres (5.08 feet) from the left side of the road and 6.25 metres (20.5 feet) from the right side of the road facing south. Given the drag marks and gouge marks identified in PC Houry's measurements in relation to the Truck and their span, it would be impossible for this POI to be as Godfrey pointed out. This would mean that Joel's bus would have had to have been on the left side of the road facing south for POI 3 to be correct and there is no allegation by any of the witnesses that this was the case.

[99] Given Godfrey's own evidence, where he said that after Aaron's bus hit him, he lost control and the Truck went to the right side of the road and then he looked and saw that the Truck was pushing another bus, which was the deceased's bus, this POI 3 could not be correct. Godfrey also says that the impact with the deceased's bus was quick. It therefore follows and I so find that it is more plausible that the impact with the deceased's bus was at POI 4 as identified by PC Houry. PC Houry in cross-examination did accept that POI 3 could not have been correct. Further support for this is found in the fact that the distance from POI 1 to POI 4 was 15 m (49.2 ft) which is consistent with the length of the drag mark leading to the Truck facing south which was 9.60 m (31.5 ft). The trajectory from POI 1 to POI 3 would be inconsistent with how Godfrey says the accident occurred and would not account for the position of the Truck and the deceased's bus after the accident.

[100] I have extracted certain measurements which I think are relevant. While I have not used all in my analysis, I have set them out to give a full picture.

POI 1-Measurements taken in relation to Truck facing south

WOR at POI 1- 7.66 m-(25.1 ft)

POI 1 to LSR facing VF-2.18 m- (7.1 ft)
POI 1 to RSR facing VF-5.48 m-(17.9 ft)
Edge of road to starting drag mark leading to motor truck facing south-2.60 m-(8.5 ft)
Edge of road to ending drag mark leading to motor truck facing south-3.70 m-(12.13 ft)
Length of drag mark leading to motor truck facing south-9.60 m-(31.5 feet)
Starting of gouge mark from right front wheel of motor truck to RSR facing south1.50 m-(4.9 feet)
Starting of gouge mark from right front wheel of motor truck to LSR facing south-6.45 m-(21.1 feet)
Length of gouge mark-1.76 m-(5.77 feet)
Ending of gouge mark from right front wheel of motor truck to RSR facing south-0.45m-(1.5 feet)
Ending of gouge mark from right front wheel of motor truck to LSR facing south-7.18m-(23.5 feet)
Distance motor truck travelled to POI 1 to final rest-26 m-(85.3 feet)
Distance motor truck travelled to POI 2 to final rest-11 m-(36 feet)
Length of motor truck-15.30m-(50.1 feet)
Width of motor truck-2.60 m-(8.5 feet)
Distance truck was when Godfrey first saw Aaron's bus-8.30 m-(27.2 feet)
Distance truck travelled to POI 1 after Godfrey first noticed Aaron's bus-3.40 m-(11.1 feet)
Distance truck travelled to POI 2 after Godfrey first noticed Aaron's bus-19.50 m-(63.9 feet)
Distance truck travelled from where Aaron first saw it to POI 1 -11.27 m-(36.9 feet)
Distance truck travelled from where Aaron first saw it to POI 2 -11.27 m-(36.9 feet)

POI 2-Measurements taken in relation to Aaron's bus facing north

WOR at POI 2-7.90 m (25.9 ft)
POI 2 to LSR facing north-2.70 m (8.8 ft)
POI 2 to RSR facing north-5.20 m (17 ft)
Length of drag mark 1 (outer) leading to Aaron's bus-7.20 m (23.6 ft)
Starting of drag mark 1 to RSR facing north-3.20 m (10.4 ft)
Ending of drag mark 1 to RSR facing north-7.60 m (24.9 ft)
Length of drag mark 1 (inner) leading to Aaron's bus-2.30 m 2.30 m-(7.5 ft)
Starting of drag mark 1 to [L]SR facing north-3 m (9.8 ft)
Ending of drag mark 1 to LSR facing north-1.70 m (5.5 ft)

Length of drag mark 2 (outer) leading to Aaron's bus-4.50 m (14.7 ft)
Starting of drag mark 2 to RSR facing north-5.60 m (18.3 ft)
Ending of drag mark 2 to RSR facing north-5.20 m (17 ft)
Length of drag mark 2 (outer)* leading to Aaron's bus-10.46 m (34.3 ft)
Starting of drag mark 2 to LSR facing north-edge of road
Ending of drag mark 2 to LSR facing north-edge of road
Pivot mark of Aaron's bus to LSR facing north-1.45 m (4.75 ft)
Pivot mark of Aaron's bus to RSR facing north-5.90 m (19.3)
Pivot point to POI 1-12.50 m (41 ft)
Pivot point to POI 2-27.50 m (90.2 ft)
Pivot point of Aaron's bus to final rest-20.70 m (67.9 ft)
Distance from where Aaron's bus was when he first saw the Truck-12.55 m (41.1 ft)
Distance Aaron's bus travelled when first saw the Truck to POI 1-23.80 m (78 ft)
Distance Aaron's bus travelled when first saw the Truck to POI 2-7.70 m (25.2 ft)
Length of Aaron's bus-5.26 m (17.2 ft)
Width of Aaron's bus-2 m (6.5 ft)
Position of front grill of Aaron's bus to POI 1 facing north-7.80 m (25.5 ft)
Position of front grill of Aaron's bus to POI 2 facing north-19.40 m (63.6 ft)
Left edge of road to grill of Aaron's bus facing north-1.40 m (4.5 ft)
Position of rear door of Aaron's bus to POI 1 facing north-7.80 m (25.5 ft)
Position of rear door of Aaron's bus to POI 2 facing north-17.60 m (57.7 ft)
Final rest position of Aaron's bus to POI 1-32.80 m (107.6 ft)
Final rest position of Aaron's bus to POI 2-47.90 m (157.1 ft)
Left edge of road to rear door of Aaron's bus facing north-2.30 m (7.5 ft)
Position of debris from Truck -pieces of plastic from trailer

Debris 1 to LSR facing south-3.05 m (10 ft)
Debris 1 to RSR facing south-4.75 m (15.5 ft)
Debris 2 to LSR facing south-2.05 m (6.7 ft)
Debris 2 to RSR facing south-6 m (19.6 ft)
Debris 3 to LSR facing south-3.75 m (12.3 ft)
Debris 3 to RSR facing south-3.80 m (12.4 ft)
Debris 4 to POI 1-7.30 m (23 ft)
Debris 4 to POI 2-10.40 m (34 ft)

[101] The debris 1, 2 and 3 referred to in these measurements is blue pieces of plastic from the Truck, while debris 4 refers to a black piece of plastic from the Truck. When I examine the measurements in relation to these pieces of debris from the Truck and their position on the road, it is clear to me that they were all on the left side of the road facing south which is where POI 1 was. That would be consistent with the accident happening on the left side of the road facing south as opposed to the right side as Aaron says. It also shows that the pieces from the Truck would have come off as result of the collision and even whilst the Truck continued to move hence the debris being at several different points as it continued moving.

Verge

[102] The measurements of the width of the verge of the left side of the road at various points was as shown below. To be clear, the verge, in relation to a road, is the strip of land located between the edge of the paved road (carriageway/curb line) and the adjacent property boundary or a sidewalk. It is typically unpaved and covered with grass, plants, or shrubs.

POI 1-3 m (9.8 ft)

POI 2-3 m (9.8 ft)

POI 3-2.80 m (9.18 ft)

POI 4-3 m (9.8 ft)

[103] It is clear that the road at the point of the accident whether POI 1 or 2 was not narrow. There was ample room. Looking at these measurements, they suggest that if the Truck moved to the left as Godfrey said he did when he saw Aaron's bus coming towards him, then POI 1 is understandable as it was 18 m or 7.1 ft to the left side of the road facing south, which would put it just a little over the middle of the left lane which was about 3.83 m or 12.5 ft wide facing south. The width of the Truck was 2.60 m or 8.5 ft. Therefore, there would have been adequate space for the Truck to have pulled left.

[104] Aaron said he pulled left to avoid the Truck. His bus was 2m or 6.5 ft wide. The width of the road at his POI 2 was 7.90 m or 25.9 ft. This means that the left lane facing

north was approximately 3.95 m or 12.9 ft. This means that Aaron would have had more than enough space to manoeuvre the bus to the left as he said he did. However, if that had been done, it is impossible that the point of impact would be where Aaron pointed out as he would have been further left and closer to the verge. I am therefore of the view that his POI 2 which falls close to the middle of the road cannot be correct.

[105] In Aaron's evidence, he says that tried to avoid the Truck, but it continued coming towards him and then he heard a loud impact to the rear of the bus. He says his vehicle remained on the left side of the road. He says as a result he immediately auto locked the bus and then it started spinning and went into the grass on the left side of the road facing Castries with its front facing Vieux Fort.

[106] It seems to me that if the Truck had hit Aaron's bus at POI 2 then the trajectory of his bus would have been totally different. It is more probable that his bus would have been pushed towards Vieux Fort. Also, the location of the grill, rear door and final rest position of Aaron's bus is closer to POI 1 which suggests that the accident occurred in the area of POI 1 rather than POI 2. Aaron's explanation of him having to auto lock is more consistent with the impact taking place on the left side of the road facing south as explained by Godfrey which then sent Aaron's bus further north facing Castries. When he auto locked this would have caused his bus to spin out towards the right side of the road facing south which explains the position of his bus after the accident and the fact that it was facing south.

[107] The measurements clearly show that Aaron's bus could not have been on his left and proper side of the road. I find that he was driving in the left lane facing south and the back of his bus collided with the front right of the Truck. That then caused the Truck's tyre to blow, and this accounts for the drag marks and gouge marks as the Truck was dragged to the other side of the road. The measurements show that the drag marks started on the left side of the road facing south which is consistent with the POI 1 given by Godfrey.

[108] I have already found that the POI for the Truck's collision with the deceased's bus was on the left side of the road facing north at POI 4 and that Godfrey's POI 3 is not probable at all. It appears from the evidence that the collision with the deceased's bus happened immediately as the Truck was pushing towards the right side of the road facing south. According to Godfrey it happened quickly which suggests that the deceased's bus must have been following close behind Aaron's bus. I find it difficult to believe Aaron when he says he did not know whether Joel was behind him. Aaron and Joel had been together at two bars before proceeding to a third and it is interesting to note that Aaron did not even look to see where his good friend was, more so because they were heading to the same location, the third bar in Dennery.

Conclusion on the evidence

[109] Having reviewed all the evidence, I accept that Godfrey's version of how the accident happened in relation to Aaron's bus is more credible given the physical measurements taken. I find on balance that Godfrey's version is the more probable version and provides a more accurate explanation of how the accident happened. His POI for the collision with the deceased's bus was definitely incorrect and was inconsistent with his explanation of how the accident happened which I accept. I do not find that Godfrey in any way contributed to the accident and there is no evidence to support the particulars of negligence pleaded against him.

[110] Based on the analysis above, I find that the accident that day was caused by Aaron's negligence. He failed to keep to his left and proper side of the road and did not exercise the duty of care expected of a reasonable, prudent driver. There is also no evidence to support the contention that Aaron was suddenly confronted with a sudden emergency. It is clear from PC Houry's evidence that both driver's saw each other before the accident happened. It was the case as I have found that Aaron was on the wrong side of the road. If anything, that would have been a sudden emergency for Godfrey not Aaron.

[111] The damage to Aaron's bus suggests that he was driving fast which is probable given that having seen the Truck, he would have been trying to get back on the left side of the road facing north. It follows that but for Aaron's negligence, his bus would not have collided with the Truck, and the Truck would not have then collided with the deceased's bus. I therefore find that Aaron's negligence caused the collision between the Truck and the deceased's bus.

[112] Mrs. Xavier in her submissions contended that it is open to the Court to make a finding of contributory negligence in relation to Joel given that he did not allow for a sufficient distance between himself and Aaron thereby preventing him from having a reasonable opportunity to take any form of evasive action. There is no evidence to support a finding of contributory negligence by the deceased. None of the evidence of the witnesses speak to any act or omission on the part of the deceased which in any manner contributed to the collision. In fact, given the description of the accident given by Godfrey, it is very probable that Joel never even had the chance to contemplate this accident because as he came around the corner he would have been confronted with the Truck.

[114] I therefore enter judgment for the claimant against the defendant, Aaron Emilien in Claim No SLUHCV2019/0147.

[115] In relation to claim number SLUHCV2021//0110, judgment is entered for the claimant against the first defendant, Aaron Emilien. The claim against the second and third defendants, Sadoo and Sons Trucking Limited and Godfrey Aurelien is dismissed.

Issue C: Whether either claimant is entitled to the relief sought, and if so, what measure of damages should the Court award?

General principles-Special Damages

[116] In relation to a claim for special damages, the law is trite and in **Ilkew v Samuels**¹⁷ the Court stated:

“Special damages in the sense of a monetary loss which the plaintiff has sustained up to the date of trial must be pleaded and particularised. It is plain law that one can recover in an action only special damages which has been pleaded and of course proven.”

[117] The point was further highlighted in **Bonham-Carter v Hyde Park Hotel**¹⁸ where Lord Goddard CJ said:

“Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down particulars, and so to speak, throw them at the head of the court saying “This is what I have lost, I ask you to give me these damages.” They have to prove it.”

[118] The purpose of an award of special damages is to compensate for out-of-pocket expenses. It is not intended to compensate for expenses not incurred or paid, hence the rule that these damages must be specifically pleaded and proven. In the Jamaican case of **Hepburn Harris**¹⁹ Rowe P. put it this way:

“Plaintiffs ought not to be encouraged to throw figures at trial judges, make no effort to substantiate them by even their own books of account and to rely on logical argument to say that specific sums must have been earned.”

Sadoo's claim for damages

Special Damages

Loss of Income/Loss of Use

[119] Mr. Sadoo's evidence is that the Truck was used in Sadoo's business of hauling containers from seaports to various business or residential locations. He says the average daily earnings from the Truck is \$1,000.00 less expenses of approximately \$200.00 making a net daily earning of \$800.00. As a result of the accident Mr. Sadoo says the Truck was written off and was not available for purchase on the local market. Sadoo ordered a replacement tractor head/truck from England in an effort

¹⁷ (1963) 1 WLR 991 at 1006 per Lord Diplock.

¹⁸ (1948) 64 TLR 177 at 178.

¹⁹ (unreported) SCCA 40/90 delivered December 10, 1990 quoted in Assessment of Damages for Personal Injuries (Revised Edition of Case note No. 2) compiled and edited by Mr. Justice Karl S. Harrison at page 18.

to mitigate its loss, and it took a period of fifty-eight (58) days from the date of the accident to its date of arrival in Saint Lucia.

[120] Mr. Sadoo gives evidence that the claim for loss of income/loss of use is \$46,400.00. In support of this claim, Mr. Sadoo exhibited what he terms relevant documents for this claim: a commercial invoice from Duncan Shear Commercials dated 4th July 2018 in the sum of £7,750.00 for a list of several items, one of which is a used DAF XF95-480 Space Cab. There is a customer payment receipt showing wire transfer of the sum of £7,750.00 to Duncan Shear on 6th July 2018. He also exhibits invoices and quotations for shipping costs dated 17th July 2018, Customs clearance documents dated 27th July 2018 and vehicle insurance, and registration documents dated 2nd August 2018.

[121] The claimant must prove its loss. In cross-examination, Mr. Richelieu put to Mr. Sadoo that he had not produced any statement to justify his claim for loss of income at \$1,000.00 per day to which Mr. Sadoo responded he did not produce it, but he had.

[122] As far as I understand, the documents provided in support of this claim were to substantiate the 58 days for which the loss was being claimed. There was no claim in relation to any of these invoices. Mr. Richelieu's submissions in relation to foreign documents is therefore not material.

[123] Mrs. John-Xavier submitted that as Managing Director, Mr. Sadoo would have personal knowledge of those facts and can speak to these matters. The question for the Court's consideration she submitted is whether he suffered the loss and whether the amount claimed is reasonable.

[124] I accept that the Truck was used to haul containers and that with the damage to the Truck, Sadoo would have suffered some loss of income. However, Sadoo has not assisted the Court in providing any information which will substantiate the claim of \$1,000.00 per day. It is for the claimant to prove its loss and not simply ask the Court

to rely on the 'say so' of the Managing Director. A record of the engagements of the Truck over a period and the amounts paid would have been useful. The claim for loss of use for 58 days does not take into account that the Truck would not have been engaged for every day of the week. Again, no indication is given of the use of the Truck per week. In these circumstances, I am prepared to award the sum of \$500.00 per day for 30 days as a nominal amount in the absence of the level of proof which would have been required. I find support for this approach in the case of **Carlton Greer v Alstons Engineering Sales and Services Ltd.**²⁰ **Sadoo is awarded the sum of \$15,000.00 for loss of income.**

- [125] Mrs. John-Xavier submits that all the items of special damages claimed has been pleaded, particularised and Sadoo is able to prove them.

Loss of Motor Truck

- [126] Mr. Sadoo says the pre-accident value of the Truck was \$160,000.00 with a salvage value of \$35,000.00. He therefore claims \$125,000.00 as the value of the Truck and supports this with a copy of the Vehicle Accident Survey Form. This claim is supported by the Accident Survey Form from Spencer's Services Ltd. which was exhibited to Sadoo's witness statement. **The sum of \$125,000.00 is awarded for the loss of the Truck.**

Accident Report

- [127] Mr. Sadoo says Sadoo expended \$500.00 for the Accident Survey Report and exhibits the invoice dated 17th January 2019 with a paid stamp on it. **The sum of \$500.00 is therefore awarded.**

Traffic Accident Report

- [128] Sadoo claims \$200.00 as the costs of the traffic accident report, however no receipt is exhibited by Mr. Sadoo. It is the accepted standard that expenses incurred must be substantiated by documentary evidence. I note though that the report was a

²⁰ [2003] UKPC 46.

critical document to the claim, and it was exhibited as part of Sadoo's evidence. Sadoo would have had to have procured the report. It is the case that the sum of \$200.00 is the standard cost of the traffic accident and this was not challenged by Aaron. In the circumstances, **I award the sum of \$200.00.**

Haulage Fees and Crane Expenses

[129] Mr. Sadoo speaks of incurring haulage fees of \$1,500.00 and exhibits an invoice from Lomus David and the sum of \$3,900.00 for use of an 80-ton crane for the handling of the Truck following the accident and exhibits an invoice from Bruce Augustin dated 11th June 2018. There is nothing to indicate that these amounts were paid.

[130] Mrs. John-Xavier submits that though there is no evidence that these amounts were paid, the expenses were incurred, and the Court can award nominal damages. It must be remembered that special damages are specific out of pocket expenses and financial losses. There must be evidence that the amounts claimed were actually paid. This is not a case where the claimant cannot prove the loss and therefore, I will not award the amounts claimed in the absence of evidence that they were actually paid. An invoice does not mean payment was made.

Conclusion on damages in SLUHCV2019/0147

[131] In relation to Sadoo's claim SLUHCV2019/0147, the defendant, Aaron Emilien shall pay the claimant, Sadoo and Sons Trucking Limited, the sum of \$15,000.00 for loss of use/income and the sum of \$125,700.00 as special damages.

Monica's claim for damages

[132] Monica claims special damages of \$93,950.88, and damages pursuant to articles 609 and 988 of the Code, interest and costs.

Damages on behalf of the Estate Joel Parris-Article 609

The Survivorship Action

[133] Article 609 of the Code provides:

“609.

- (1) On the death of any person after the commencement of this Chapter, all causes of action subsisting against or vested in him or her shall survive against, or, as the case may be, for the benefit of, his or her succession:

...

- (2) Where a cause of action survives as aforesaid for the benefit of the succession of a deceased person, the damages recoverable for the benefit of the succession of that person—

- (a) ...

- (b) ...

- (c) Where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his or her succession consequent on his or her death, except that a sum in respect of funeral expenses may be included.

- (3) No proceedings shall be maintainable in respect of a cause of action in delict or quasi-delict which by virtue of this article has survived against the succession of a deceased person, unless either—

- (a) proceedings against him or her in respect of that cause of action were pending at the date of his or her death; or

- (b) proceedings are taken in respect thereof not later than 6 months after his or her personal representative took out representation.

- (4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Chapter, to have been subsisting against him before his or her death such cause of action in respect of that act or omission as would have subsisted if he or she had died after the damage was suffered.

- (5) ...

- (6) ...”

[134] Mrs. John-Xavier submits that Monica cannot maintain or succeed in a claim for compensation under article 609 of the Code as she has not satisfied the criteria set out in article 609 (3)(b), which mandates that a claim under this article be made not later than six months after the personal representative took out representation.

[135] In this case, Monica would have been granted letters of administration with respect to Joel's estate on 26th June 2019. Therefore, the latest date for filing of her claim under article 609 of the Code would have been 27th December 2019. Monica's claim was filed on 13th May 2021. She is therefore not entitled to compensation under article 609 for loss of expectation of life, loss of earnings for the lost years and the special damages except for the claim for funeral expenses which can also be claimed under the dependency claim.

Dependency Action-Article 988

[136] Article 988 of the Code states:

“(1) For the purposes of this article,—
“**parent**” means father or mother, step-father or step-mother, adopted father or adopted mother, grandfather or grandmother;
...

(2) Where the death of a person is caused by a wrongful act, neglect or default which is such as would (if death had not ensued) have entitled the party injured to maintain an action for damages in respect of his or her injury thereby, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to felony.
...

(10) For the purposes of an action brought under this article, damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought.”

[137] In assessing damages for the purposes of article 988, the Court uses the conventional multiplier v multiplicand approach as stated in **Alphonso v Ramnath**.²¹ The multiplicand is the amount Joel would have earned prior to his death with adjustments made for expected expenses and the uncertainties of life. The multiplier refers to the number of years Joel would have worked for but for his untimely death.

²¹ (1997) 56 WIR 18.

- [138] Monica being the mother of Joel qualifies as his dependent under article 988(3) of the Code. At the date of the trial, Monica was 58 years old and worked at Massy Stores Warehouse. Joel was 34 years old at the time of his death having been born on 24th December 1982. He would have been 39 years old at the date of trial.
- [139] Monica says that when Joel was alive, he assisted her with her monthly expenses. She gives no idea of what that assistance was. In arriving at the multiplicand, the starting point is the amount that the deceased was earning. Then one must consider the estimate of how much was required or expended for the deceased's own personal and living expenses. The balance would be the basic figure which would be used to calculate the lump sum using the multiplier. The sum would have to be taxed down having regard to uncertainties and other like matters of speculation and doubt.
- [140] Monica gives evidence that at the time of Joel's death, he was a taxi driver earning an average of \$4,000.00 monthly. She exhibits (i) a contract from Cox and Company for the period 1st October 2016 to 30th September 2017; (ii) a letter dated 5th September 2017 from T.E. Touring Services Inc showing that Joel was employed as a subcontracted driver from 30th November 2015 for tours from the hotels or cruise ships and his monthly expected revenue is about \$4,700.00; (iii) an undated letter from Evergreen Passenger Transport Limited indicating that they would be contracting Joel for the next three years and that he has been earning an average of \$4,900.00 monthly; two service contracts for periods in 2017 where he was to be paid \$4,628.00 for February to July 2017 and \$12,870.00 for March to June 2017; (iv) a letter dated 23rd February 2021 from Cox and Company stating that the following amounts were paid to Joel: \$3,882.00 in 2015, \$924.00 for 2016, \$11,436.00 for 2017 and \$9,359.00 for 2018.
- [141] The documents provided do not show the deceased's actual income except for the letter from Cox and Company which speaks to the amounts he was paid over four years. The only evidence of what Joel was making in 2018, the year of his death was provided in the letter provided by Cox and Company. All the other evidence of

contracts were for the years before 2018. It is understood that as a taxi driver, the deceased would not have had a pay slip, and his income may have fluctuated but the evidence provided does not support a monthly income of \$4,000.00. In the circumstances, I am prepared to accept a nominal monthly earning of \$2,000.00. This figure would be discounted by 50% for living expenses and expenses related to the bus. This also takes into account income tax payments. His net monthly income would therefore be \$1,000.00. The multiplicand is therefore \$1,000.00.

The multiplier

- [142] According to **Eldon Wilson v Lance Willie**,²² the starting point in the calculation of the multiplier is the number of years that is anticipated that the dependency would have lasted had the deceased not passed away. The dependency must be considered from the date of death to the date of assessment. Both Counsel for Monica and Counsel for the first and second defendants suggest a multiplier of 15 which I think is reasonable given Monica's age and the expected period during which her dependency would have lasted.

The calculation of the dependency award is as follows:

$$\text{\$1000.00} \times 12 \times 15 = \text{\$180,000.00}$$

Funeral expenses

- [143] Article 988 allows for recovery of funeral expenses. In her evidence, Monica says she, her daughter Desma Parris and daughter in law, Molika Chastanet spent a total of \$12,950.88 towards funeral and testamentary expenses. The receipts at pages 144 to 146 of the trial bundle show payments of (i) \$90.00 for paint (Monica does not say what this was for); \$50.00 for extra badges from Crick's funeral home; \$3,240.75 for services rendered by the funeral home. At page 147 of the trial bundle is what appears to be an invoice from the funeral home in the amount of \$6,480.13 but there is no indication that this amount was paid. I also note that the documents from the funeral home are in the name of Desma Parris. These receipts total \$9,860.00.

²² SLUHCVP2020/0006, (delivered 25th July 2024, unreported).

[144] Counsel for Monica, Ms. Ann-Alicia Fagan and Mrs. Shahida Charlemagne-Octave, in submissions stated that the issuance of the receipts in the name of the claimant's family members, does not preclude the Court from awarding compensation to the estate of the deceased for expenses incurred. They say that the receipts clearly show that the sums paid were for the funeral expenses relating to the deceased, Joel Parris.

[145] Mrs. John-Xavier in her submissions states that Monica has failed to show that the amounts claimed were actually incurred or paid by her. She also points to the fact that in cross-examination, Monica acknowledged that she had no authority to claim the said amounts on behalf of Desma.

[146] None of these receipts show that any of these amounts claimed were paid for or incurred by Monica. There is no evidence from Monica to assist the Court in understanding why she would claim an amount which has been seemingly incurred by someone else. It may have been helpful to assist the Court in understanding the payments made. The Court does not know whether these amounts were donations or gifts and not actually expenses incurred by the estate. I therefore make no award for funeral expenses.

Conclusion and Order

[147] Based on the forgoing discussion, I make the followings orders

1. Judgment is entered for the claimant, Sadoo and Sons Trucking Limited against the defendant, Aaron Emilien in Claim Number SLUHCV2019/0147.
2. In Claim Number SLUHCV2019/0147, the defendant, Aaron Emilien shall pay the claimant, Sadoo and Sons Trucking Limited, (a) the sum of \$15,000.00 as general damages for loss of use/income together with interest thereon at the rate of 6% per annum from the date of judgment to the date of payment and (b) the sum of \$125,700.00 as special damages with interest thereon at the rate of

3% from 5th June 2018 to the date of this judgment and 6% per annum from the date of judgment to the date of payment.

3. Judgment is granted for the claimant, Monica Parris as Administratrix of the Estate of the Deceased, Joel Parris against the first defendant, Aaron Emilien in Claim Number SLUHCV2021//0110.
4. The claim against the second and third defendants, Sadoo and Sons Trucking Limited and Godfrey Aurelien in Claim Number SLUHCV2021/0110 is dismissed.
5. The first defendant, Aaron Emilien shall pay the claimant, Monica Parris as Administratrix of the Estate of the Deceased, Joel Parris the sum of \$180,000.00 being damages pursuant to article 988 of the Civil Code together with interest thereon at the rate of 6% per annum from the date of this judgment to the date of payment.

Costs

[148] The trial in these claims was heard prior to the revision of the Civil Procedure Rules in 2023 and therefore the prescribed costs regime in the Civil Procedure Rules 2000 is to apply. The Court makes the following orders in relation to costs:

6. The defendant shall pay prescribed costs to the claimant Sadoo in Claim Number SLUHCV2019/0147.
7. The defendant, Aaron Emilien shall pay prescribed costs to (i) Monica and (ii) to Sadoo and Sons Trucking Limited and Godfrey in claim number SLUHCV2021/0110.

[149] I thank Counsel and the parties for their patience as they awaited the delivery of this judgment.

Kimberly Cenac-Phulgence
High Court Judge



By The Court

Registrar