

**THE EASTERN CARIBBEAN SUPREME COURT
ST. VINCENT AND THE GRENADINES**

**IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)**

CLAIM NO. SVGHCV 2023/0152

BETWEEN:

KATHLEEN JACK-PAYNE

Claimant

And

ST. VINCENT AND THE GRENADINES POLICE CO-OPERATIVE CREDIT UNION

Defendant

Before Master Vernetta S. Richardson (Ag)

Appearances:

Mr. Jomo Thomas for the Claimant

Ms. Patina Knights for the Defendant

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2025: September 18.

On Written Submissions
.....

RULING ON SPECIAL DAMAGES

[1] **RICHARDSON, M. (AG):** The issue is whether the claimant is entitled to special damages where they were not pleaded, or, in the alternative, directions for special damages.

[2] The brief facts are: The claimant was injured during the course of her employment with the defendant on 22nd September 2020. She filed a claim form on 22nd September 2023 in respect of her personal injuries and one of her claims was for special damages. She did not plead nor particularize the special damages in her statement of case.

However, she did exhibit six medical reports and reserved the right to rely on other medical reports.

- [3] On 11th October 2023, the defendant filed an acknowledgement of service denying the claim and their intention to defend the claim. On 30th October 2023, the defendant filed a notice of admission admitting liability and their wish to be heard on the issue of quantum at the assessment of damages stage. When the matter came up for directions on the assessment on 18th July 2024, the parties agreed to enter into settlement discussions.
- [4] On 28th April 2025, the parties informed the court that they have agreed the general damages and costs. However, the special damages were not agreed as they were claimed but not pleaded. On 20th May 2025, counsel for the claimant requested to file submissions on whether or not the claimant is entitled to special damages in circumstances where they were not pleaded, or, in the alternative, directions for special damages. It was agreed counsel will file submissions. The claimant was ordered to file submissions by 19th June 2025 and the defendant by 3rd July 2025. Thereafter, the decision was reserved.
- [5] The general principle is that special damages must be strictly pleaded, particularised and proved. See **Ilkiw v Samuels**.¹ Diplock L.J. opined: “...because everyone has accepted it as being the law for the last hundred years- that one can recover in an action only special damage which has been pleaded, and, of course, proved.”
- [6] McGregor on Damages² states:
- “... Lord Goddard in *British Transport Commission v Gourley* [1956] A.C. 185, 206 where he said: “In an action for personal injuries the damages are always divided into two main parts. First, there is what is referred to as special damage, which has to be specially pleaded and proved. This

¹ [1963] 2 ALL ER 879 at page 890 paragraph I

² 14th Edition at paragraph 19

consists of out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation.”

- [7] In the instant case, the claimant claimed special damages in her statement of case. However, the special damages were not pleaded nor particularised. Thus, applying the principle in the **Ilkiw** case, no sum can be recovered for special damages. In the claimant’s submissions, the reason given for this failure was “through an unfortunate case of inadvertence, the claimant’s special loss and damage were not itemized on (sic) her claim form.”
- [8] In **Ilkiw** case the claimant pleaded special damages in the sum of £77. However, he sustained special damages of about £2,000. Diplock L.J stated:
- “This was not pleaded, and no application to amend the statement of claim to plead it could be made because of the agreement already arrived at the sum of £77 for special damages.” (Emphasis mine.)
- Counsel, before the trial, had agreed to the sum of £77 for special damages.
- [9] “The overriding objective of these rules is to enable the court to deal with cases justly”; Rule 1.1. Further, “it is the duty of the parties to help the court to further the overriding objective.”
- [10] The claimant has incurred expenses as a result of the defendant’s negligence, for which the defendant has admitted liability. The defendant would have been aware that the claimant is seeking special damages albeit not aware of the amount. Medical reports were produced and it is reasonable to conclude some costs were incurred. The defendant therefore cannot be said to be caught off guard. I understand the defendant to be saying you have not pleaded, particularised and proved special damages therefore you are not entitled to recover this sum.
- [11] The claimant has advanced the argument that “where the claimant fails to satisfy the

aforementioned general requirements, the court does not close its door.” The court can make such award in respect of the losses suffered by the claimant as the court considers reasonable in the circumstances. The claimant supported this position with the authorities of **The Proprietors, Condominium Plan No 2/1989 v Trinity Investment Company Limited**,³ and **Econo Parts Ltd v The Comptroller of Customs & Excise**⁴.

[12] I agree with counsel for the defendant that those cases dealt with the proof of special damage, not the failure to plead, particularise the special damages. I draw this from the beginning of paragraph 43 of **The Proprietors** case where Michel JA stated: “*The claim by the Respondents for special damages in a stated amount is a pleading requirement, which has been satisfied. If, however, a claimant is to be awarded the sum claimed by him, he must substantiate it by evidence on which the court can rely.*” (Emphasis mine.) In the **Econo** case it dealt with special damages not proven which suggest they were pleaded.

[13] The defendant relied on the case **Janine Forde v Martin Williams**⁵ where Gill M. applied the general principle when she disallowed special damages for the MRI and physiotherapy as they were not pleaded.

[14] On 28th April 2025, counsel referred the court to the decision in **Denise Violet Stevens v Luxury Hotels International Management St. Kitts Limited**⁶ which the court found to be instructive. Unlike the case at bar, the claimant did plead and particularise the special damages. However, there was an increase in the sum for special damages. The claimant therefore filed an application to amend the special damages. Acting Master Corbin-Lincoln granted the amendment after the limitation period.

[15] I concur with the master where she stated at paragraphs 60 and 61 in **Denise Stevens**

³ ANUHCVP 2008/0009 at paragraph 43

⁴ SLUHCVP 2017/0019 at paragraph 20

⁵ SVGHCV 2017/0193

⁶ SKBHCV 2013/0069

case: “the overriding objective is to deal with cases justly. A refusal of the application would in my view prevent the claimant from seeking to recover losses suffered as a result of the negligence of the defendant. Permitting the amendment will not automatically result in the claimant recovering the sums pleaded – she is still required to prove her loss at the hearing in which the defendant has an opportunity to be heard. The only evident prejudice to the defendant in my view can be compensated in costs and or in the determination of an award of interest and in the circumstances I do not find that the amendment would result in an injustice to the defendant. [61] Taking all the circumstances into consideration, notwithstanding the delay by the claimant in making the application, I find the justice of the case requires that the claimant be granted leave to amend her statement of case as indicated in the draft amended statement of claim.”

- [16] Based on the cases of **Ilkiw** and **Denise Stevens** even where special damages have been pleaded and particularised, where there is a change the proper course is to amend the statement of case. Thus, where there has been a failure to plead and particularise, the proper course should be to seek an amendment of the statement of case. I commend this course to counsel, who can consent to any amendment prior to the claimant filing any application for leave to amend, if this is a course counsel for the claimant is minded to take.
- [17] In the claimant’s submissions she stated she “possesses the evidence by way of receipts to prove her losses (sic). She has suffered undoubtable losses common in personal injury matters. Such losses include doctor’s report, MRI scan and pain medication.” It is fair and just that the claimant be given an opportunity to plead, particularise and prove her special damages thus concluding all the issues between the parties.
- [18] I am of the view, that based on the claimant’s existing statement of case she is not entitled to special damages as she has not pleaded, particularised or proven same. However, it is open to the claimant to amend her statement of case to properly plead, particularise and prove same under Rule 20, especially in light of the fact that the

parties are still in settlement discussions. It is noted that counsel are complying with Rule 25.1 (g): *"The court must further the overriding objective by actively managing cases. This may include – encouraging the parties to co-operate with each other in the conduct of proceedings."*

[19] I thank counsel for their helpful submissions.

Vernette S. Richardson

High Court Master (Ag)

BY THE COURT

REGISTRAR