

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. ANUHCv2023/0203

BETWEEN:

WAYEL LUWAISA

Claimant

and

[1] ANGUS CARBON

[2] KENNETH CARBON

Defendants

Appearances:

Mr. Kendrickson Kentish KC, Counsel for the Claimant

Mr. Lawrence Daniels, Counsel for the Defendants

2025: March 20th; 31st; (written submissions)
April 4th.

DECISION ON ASSESSMENT OF DAMAGES

- [1] **MICHEL, M.:** On or about 18th April, 2018 the Claimant, whilst driving his pick-up truck was involved in a motor vehicle accident with a pick-up truck owned by the 2nd Defendant and driven by the 1st Defendant. The 1st Defendant drove over a pile of gravel whilst driving east to west along a road in the vicinity of Carter Car Rental Guest House and collided with the Claimant's pick-up truck which was travelling from west to east on the said road. The Claimant's vehicle was extensively damaged in the collision.
- [2] The Claimant subsequently commenced these proceedings against the Defendants alleging that the collision was caused by the 1st Defendant's negligence and that as a result of the 1st Defendant's negligence causing the collision, he suffered loss and damage and incurred expense.
- [3] The Claimant pleaded the following as items of special damage in his statement of claim:-

(1) Cost of Police Report:	\$200.00
(2) Cost of repair of damaged vehicle:	\$46,404.47
(3) Loss of use of vehicle:	\$11,250.00

Total: \$57,854.47

- [4] The Claimant accordingly claimed the following:-
1. Cost of repairing vehicle in the sum of \$57,854.47;
 2. In the alternative the cost of replacement of a vehicle of the same make and model;
 3. Damages;
 4. Interest on damages;
 5. Costs;
 6. Such further and other relief as the court thinks fit.
- [5] The Claimant's claim was duly served on the 1st and 2nd Defendants on 5th November, 2023 and 4th November, 2023 respectively. No acknowledgement of service of the Claimant's claim was filed by the Defendants and at the request of the Claimant, judgment in default of acknowledgement of service was entered for the Claimant against the Defendants for an amount to be decided by the Court. The matter subsequently came on for this assessment of damages.
- [6] The Court is guided by the pronouncements of Edwards JA in **Michael Laudat et al v Danny Ambo**¹ as to the approach to the assessment of damages following a default judgment:-
- “The issue of the defendant's liability having been settled by the default judgment, the only issue for the court is how much in compensatory damages is due to the claimant upon the evidence adduced by the claimant in proof of any special damages claimed and general damages. Where damages for any pleaded causes of action have not been proven by the evidence, the claimant would generally not be entitled to damages under that head of claim.”
- [7] The Claimant filed witness statements and written submissions for the assessment of damages. The Defendants each filed a witness statement but did not file any written submissions. The Defendants did not attend the assessment of damages hearing; however, Mr. Lawrence Daniels, learned counsel for the Defendants appeared on their behalf and cross-examined the Claimant and his witness Husan Ibrahim. The Claimant's second witness did not attend the assessment of damages hearing and could not be cross-examined. Little weight if any could therefore be placed on the witness statements of the persons who did not attend the hearing.

¹ DOMHCVAP2010/0016 (delivered 15th December 2010, unreported).

- [8] At the end of the assessment of damages hearing, the Parties were directed to file brief written closing submissions by 28th March, 2025. The Claimant filed his closing written submissions on 31st March, 2025. No closing submissions were filed by the Defendants.

Cost of Police Report

- [9] The Claimant obtained a police report following the accident. He seeks the sum of \$200.00 for the report. Exhibited to his statement of claim was a police report dated 26th April, 2018. The Claimant did not provide a paid receipt for the police report, nor did the report state that it was sought or obtained by the Claimant. The Claimant however in his witness statement stated that he obtained the police report at a cost of \$200.00. This was not challenged by the Defendants. I am satisfied based on the Claimant's evidence that he sought the police report of the accident and that there was a cost in obtaining it. In the absence of any evidence to the contrary, I consider the sum of \$200.00 to obtain the police report to be reasonable. This is an expense I am satisfied the Claimant incurred as a result of the accident and he is therefore entitled to recover the cost of obtaining the police report. I would therefore award the Claimant \$200.00 for the cost of the police report.

Cost of repair of Damaged Vehicle

- [10] The Claimant stated in his witness statement that because of the accident, his vehicle which had a pre-accident value of \$89,000.00 was reduced in value to \$10,000.00 if sold for parts. He stated that as such, his vehicle was a total loss. The Claimant provided an estimate from Modern Auto and Body Shop dated 13th November, 2018, a post-accident evaluation from Reginald Matthew Auto Body Repairs endorsed by Antigua and Barbuda Auto Body Repair Association and an evaluation from Evaluation Plus. The estimate from Modern Auto and Body Shop gives an estimate of the cost of repair of the vehicle as \$46,000.67. The estimate from Reginald Matthew Auto Body Repairs endorsed by the Antigua Auto Body Repair Association stated the cost of repair of the vehicle as \$46,404.47. The report noted that before the accident the value of the vehicle was \$89,000.00 and after the accident the value is now \$10,000.00. It stated that because of damage to the vehicle, the vehicle was considered a write-off. The evaluation report from Evaluation Plus dated 17th November, 2017 estimated the approximate market value of the Claimant's vehicle at \$89,000.00.
- [11] Under cross examination by Mr. Lawrence Daniels, learned Counsel for the Defendants, the Claimant stated that he fixed the damaged vehicle at a cost of \$46,404.47. Mr. Daniels stated to the Claimant that he had not produced any receipts for the parts purchased to fix the vehicle. In response, the Claimant

stated that he had produced an invoice. In response to further questioning about proof of the estimate, the Claimant stated that he paid the invoice in full. The Claimant further clarified that he paid to fix the vehicle and payment was made based on the estimate of Mr. Reginald Matthew in the sum of \$46,404.47. He stated that he paid this amount in full to Mr. Matthews to have his vehicle fixed. In response to questions from Mr. Daniels, the Claimant stated that upon making the payment to fix the vehicle, he was given the invoice from Mr. Matthew.

- [12] The Defendants sought to argue that the Claimant is not entitled to the full pre-accident value of the vehicle. They contend that the damage to the vehicle was only to the right side, i.e. the right side of the front grill and the doors on the right side of the Claimant's vehicle and that the vehicle was not a write-off.
- [13] Based on the Claimant's pleadings, his evidence elicited under cross-examination and the written submissions filed on his behalf, it is pellucid that the Claimant is not seeking to recover the pre-accident value of the vehicle. Rather, the Claimant is seeking to recover the lesser sum of the cost expended to repair the vehicle. The Claimant's evidence is that the amount expended to repair the vehicle was \$46,404.47 and he relies on the invoice or estimate from Reginald Matthew, Autobody Repairs, endorsed by a stamp from the Antigua Auto Body Repair Association.
- [14] Special damages must be pleaded and established by a claimant. In my view, the Claimant has properly pleaded that his vehicle was damaged as a result of the collision caused by the negligence of the 1st Defendant resulting in loss to him and that the cost to repaid the damaged vehicle was \$46,404.47. I am satisfied by the evidence that the Claimant has established the cost to repair the vehicle in the sum of \$46,404.47 as provided in the invoice or estimate of Reginald Mathew, Autobody. I accept the Claimant's evidence he expended this sum reflected in the invoice from Reginald Matthew, Autobody Repairs.
- [15] Although I am of the view that the Claimant has sufficient documentary evidence before the Court to substantiate his loss, in any event, the lack of documentary evidence by way of paid receipts in the face of an undoubted loss which has been pleaded should not disentitle the Claimant in the circumstances of this case, to recover sums for this loss. In **Malcolm Joseph et al v Alison Charles**,² Barrow J, in referring to the case of **Grant v Motilal Moonan Ltd**,³ stated:

"This decision is clear authority for the proposition that values do not have to be proved by documentation and the decision readily lends

² Grenada Claim no. 2002/0077 (delivered 6th February 2003, unreported).

³ (1988) 43 WIR 372 at para. 377d to 378.

support to the view that reasonable and informed estimations may be accepted as proof, especially in the absence of contrary evidence.”

- [16] The Defendants have not provided any evidence, to the contrary, documentary or otherwise as to the cost of repairing the Claimants’ damaged pickup truck. The Claimant on his claim pleaded the cost of repairing the motor vehicle in the sum of \$46,404.47 and claimed this sum. I am satisfied on the Claimant’s evidence that the cost of repairing his vehicle would have been \$46,404.47. The Claimant is entitled to be put back into the position he would have been in but for the 1st Defendant’s negligence. Although the Claimant has not provided a receipt for payment of the invoice for the repairs, I am satisfied that he has nonetheless proved this loss and is therefore entitled to recover this sum from the Defendants for the damage to the vehicle. I would therefore award the Claimant the sum of \$46,404.47 for the cost of repairing his damaged vehicle.

Loss of Use of Vehicle

- [17] The Claimant seeks the sum of \$11,250.00 for loss of use of his vehicle.

- [18] In **Tropical Builders v Gloria Thomas**⁴ Blenman J stated:-

“It is the law that the owner of a motor car that is damaged, or as in the case at bar, is a write off is entitled to recover for being deprived of its use during the period that he was without a motor car. The general principle is that the Court seeks to compensate the Claimant for the use which, but for the wrong, he would have had of the motor car.”

- [19] In the Trinidadian case of **Lynette Hughes v Dognath Deonarine & Ryan Deonarine**⁵ it was stated that:

“It is trite law that the usual period for loss of use in the case where the chattel is repairable is the length of time it would have taken to repair the chattel. Where it is uneconomical to repair the claim for loss of use is limited to the time it would have reasonably taken to obtain a replacement.”

- [20] The Claimant’s evidence is that his vehicle was extensively damaged in the accident. His further evidence is that in the interim after the accident, he had to rent alternative vehicles to keep his income flowing as a dedicated businessman. He provided invoices from Max Motors and three invoices from

⁴ ANUHCv2004/9228 (delivered 22nd May 2007, unreported) at para. 31.

⁵ CV234/1998 (HC T&T).

J'Sean Enterprise for the rental of an alternative pickup truck. The invoices total \$11,250.00. It is noted that these are invoices and not paid receipts.

- [21] The first invoice from J'Sean Enterprise dated 18th September, 2018 is for the lease of a pickup truck for a period of 30 days from 12th April, 2018 to 11th May, 2018 at \$135.00 per day totaling \$4,050.00. The second invoice from J'Sean Enterprises also dated 18th September, 2018 is for the lease of a pickup truck for a further 30 days from 11th May, 2018 to 11th June, 2019 at \$120.00 per day totaling \$3,600.00. The third invoice from J'Sean Enterprise dated 12th June, 2018 is for the lease of a pickup truck for a further 30 days from 12th June, 2018 to 11th July, 2018 at \$120.00 per day totaling \$3,600.00.
- [22] The Claimant therefore seeks to recover sums for the rental of a pickup truck for a period of 30 days at \$135.00 per day and for a further period of 60 days at \$120.00 per day. As previously stated, the Claimant has not provided paid receipts for the rental of a vehicle. However, a claimant is entitled to be compensated for the loss of use of their vehicle occasioned by a defendant's negligence. The period for such loss of use and the rate of such compensation ought to be reasonable.
- [23] Under cross-examination the Claimant stated that it took six months to repair his vehicle. The invoices provided to the Court to show the cost of repairing the vehicle do not indicate the length of time it would take to have the vehicle repaired.
- [24] The Claimant has provided documentary evidence as to the cost of renting a vehicle when he was unable to use his damaged vehicle. His evidence shows the cost of renting the vehicle at \$135.00 per day for 30 days in the first instance and \$120.00 per day for the 60 days thereafter. I am satisfied that these are reasonable sums for renting of a vehicle.
- [25] The Claimant is entitled to recover sums for loss of use of his vehicle damaged by the Defendants' negligence for a reasonable period. In the absence of any evidence to the contrary, I am satisfied on the Claimant's evidence that he was without the use of his vehicle after the accident. The evidence provided to the Court demonstrates that the vehicle was extensively damaged on the right side.
- [26] I am also satisfied that given the extent of the damage to his vehicle that a period of loss of use of 90 days is not unreasonable. As previously indicated, I also consider that the sum of \$135.00 per day for the first 30 days and \$120.00 per day for a further 60 days is reasonable. I have not been presented with any evidence or argument that convinces me that these sums are too high. I would therefore award the Claimant the sum of \$11,250.00 for loss of use of his vehicle.

Interest

[27] The Claimant is entitled to interest on his claim. In calculating pre-judgment interest on the sums found payable to the Claimant, I am guided by the principles espoused by the Court of Appeal in Alphonso v Ramnath⁶ and Terrance Amedee v Marcus Modeste.⁷

Disposition

[28] In light of the foregoing, the Defendants shall pay the Claimant the following sums:-

1. Special damages in the sum of \$46,604.47 (the sum of \$200.00 for the police report and the sum of \$46,404.47 for the cost of repairing the damaged vehicle) together with interest at the rate of 2.5% per annum from the date of the accident, to the date of this Order.
2. The sum of \$11,250.00 for loss of use of the vehicle together with interest at the rate of 2.5% per annum from 11th July, 2018 to the date of this Order.
3. Post judgment interest on the global award at the statutory rate of 5% per annum until payment in full.
4. 60% of prescribed costs on the global award of \$57,854.47 in accordance with rule 65.5 of the **Civil Procedure Rules (Revised Edition) 2023** and Part 65, appendices B and C in the sum of \$6,706.90.

[29] I wish to thank learned King's Counsel for the Claimant and counsel for the Defendants for the assistance provided to the Court for this assessment.



Carlos Cameron Michel
High Court Master

By the Court

Registrar

⁶ (1997) 56 WIR 183.

⁷ SLUHCVP2022/0001 (delivered 9th November 2022, unreported).