

THE EASTERN CARIBBEAN SUPREME COURT

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

SAINT LUCIA

Case Number: SLUHCV2021/0441

BETWEEN:

JADIAH PIERRE

Claimant

-and-

SHANA MATOORAH WILLIE

Defendant

Before the Honourable Mr. Justice Alvin Pariagsingh

Appearances: Mr. Alvin St. Clair for the Claimant
Ms. Cleopatra Mc Donald and Ms. Laurène Abboud for the Defendant

2024: September 30 - Trial
November 1, 4, 15 – Closing Submissions
December 16- Supplemental Submissions
December 18 – Decision

JUDGMENT

Claim in negligence for special damages, general damages, interest and costs

[1] **PARIAGSINGH, J:** - On November 4, 2021, the Claimant filed his Claim Form and Statement of Case, alleging the Defendant caused him loss and damage through her negligent driving of vehicle registration number 9235.

THE CLAIM:

[2] The Claimant, a 29-year-old construction worker, was riding his motorcycle (registration number 3339) on June 15, 2021, when he alleges that the Defendant, who had parked her vehicle near Dame Pearlette Louisy Primary School, pulled out and collided with him. This caused the Claimant to lose control and crash into a drain.

[3] As a result, the Claimant suffered severe injuries: a leg amputation, fractured femur (requiring surgery), a scar, and a dislocated collarbone. His motorcycle, worth \$10,000.00 before the accident, was totaled. Additionally, he incurred medical expenses, loss of income and earning capacity, as he was unable to work following the accident. At the time, the Claimant was employed by Applied Construction Ltd, earning \$90.00 daily, and was also part of the Seasonal Agricultural Workers Program in Canada, where he earned CAD\$1,700.00 per month.

[4] Beyond physical injury, the Claimant lost his independence, relies on crutches or assistance for mobility, and can no longer engage in activities like gardening or motorcycle riding. His psychological state was also affected, including disrupted sleep patterns and a diminished social and love life. He seeks the following reliefs:

1. Special damages of \$21,801.25 plus additional expenses;
2. General damages for loss of earnings and earning capacity;
3. Interest;
4. Costs.

DEFENCE AND COUNTERCLAIM:

[5] The Defendant denied responsibility and blamed the Claimant's negligence. She stated that on the day of the accident, she was driving behind a stationary white car and, after checking her mirrors and ensuring no vehicles were approaching from behind, she began to overtake it. As she was pulling alongside the stationary car, she heard a noise from the Claimant's motorcycle, which was attempting to overtake her vehicle. The Claimant accelerated and collided with her vehicle's rear-view mirror, which detached. She stopped her vehicle, and the Claimant lost control of his motorcycle, veering off the road and hitting a streetlight pole. The Defendant claimed the collision was unavoidable, caused by the Claimant's attempt to overtake both her vehicle and the stationary one.

[6] The Defendant argued that any injury or loss suffered by the Claimant was caused by his own negligence, as he knowingly accepted the risk by attempting to overtake.

[7] The Defendant also filed a counterclaim, alleging damages from the Claimant's negligence, as well as anxiety and stress. She claimed \$7,156.60 in financial loss, including insured and uninsured damages, and sought the following reliefs:

1. Special damages of \$7,156.60 with interest at 6% per annum from June 15, 2021, to payment;
2. General damages for pain, suffering, and loss of amenity;
3. Interest at the court's discretion;
4. Costs;
5. Any other relief the court deems fit.

REPLY TO DEFENCE AND DEFENCE TO COUNTERCLAIM:

[8] The Claimant filed a reply, reaffirming his version of events and denying negligence. Regarding the counterclaim, he denied responsibility for any damages the Defendant incurred, asserting they were directly caused by her negligent driving.

THE EVIDENCE AT TRIAL:

[9] Five witness statements were filed in support of the Claimant, including those from the Claimant himself, his sister Malachia Pierre, mother Lera Pierre, sister Christencia Pierre-Joseph, and girlfriend Christin Louis. Lera Pierre did not testify at trial, so her statement was not considered.

Claimant's Witness Statement and Cross Examination:

[10] The Claimant's statement echoed the content of his pleadings. The Court was not impressed with the Claimant as a witness. The Court found him to be evasive at times and although he attempted to stick to a narrative, his obvious annoyance at certain questions and vague answers left the Court feeling less confident about accepting his evidence as the truth.

[11] The Court was also fortified in its view that the Claimant has skewed his evidence in a particular way to suppress relevant evidence, when at the site visit, the Court was invited by the Claimant himself (on the record of the site visit) to view photographs and contemporaneous video evidence, none of which was put into evidence by him.

[12] The Court does not accept the Claimant's evidence of how he says the accident occurred.

Witness Statement of Malachia Pierre

[13] Malachia Pierre's evidence only went to damages. She outlined the changes to her life after the Claimant's accident. From July 2021, she took on financial responsibility for the Claimant's daughter, spending \$500.00 monthly on her transportation, food, and personal supplies. She also visited the Claimant daily after work to assist with his care and household tasks. The Court found her to be an honest witness.

Witness Statement of Christencia Pierre-Joseph

[14] Christencia Pierre-Joseph's evidence also only went to damages. She detailed events after the accident. She stated that the Defendant visited the hospital on June 15, 2021, confessed to overtaking without checking for oncoming vehicles, and apologized repeatedly, even fainting due to distress. As the Claimant's eldest sister, she was responsible for the decision to amputate his leg, which caused her significant stress. She also took on daily responsibilities, including bringing breakfast to the hospital, assisting with his care, buying medications, and covering her nephew's school expenses.

[15] I do not accept her evidence about a contemporaneous admission of any liability by the Defendant. I accept the Defendant's version of the conversation at the hospital. In my view, such a material fact ought to have been pleaded so it could be frontally addressed as part of the party's case and not find itself into a witness statement at which time, there was no opportunity to deny it.

Witness Statement of Christin Louis

[16] Christin Louis's evidence only went to damages. She shared the challenges of living with a disabled partner. She had to adjust to managing the Claimant's medication, meals, and wound care while working a full-time job. In addition, she contributed to household duties, medical supplies, and family expenses. These responsibilities affected her mentally and strained their relationship. She expressed a desire for compensation for her losses and suffering. The Court accepted her evidence generally and found her to be a witness of the truth.

Defendant's Evidence

[17] The Defendant was the sole witness for her case. Her statement aligned with her pleadings regarding the incident. She recalled seeing the Claimant's leg bleeding heavily and in an awkward position after the collision, prompting her to call an ambulance and the police. The Claimant was taken to the hospital, and the police recorded details of the accident.

[18] The Defendant later visited the hospital but did not see the Claimant. She spoke with the Claimant's sister, who gave her contact information. The Defendant and her husband made periodic calls to check on the Claimant's recovery, offering assistance. Eventually, the Claimant stopped responding to their calls.

[19] On September 21, 2021, the parties visited the accident scene with Police Constable 815, where they provided their accounts. A report was generated on January 12, 2022.

PRELIMINARY MATTERS:

[20] At the start of the proceedings, I asked if there were any housekeeping matters. The Defendant's counsel made two oral applications: the first sought to strike out portions of the Claimant's witness statement, and the second sought permission to comment on evidence in the statement of Christencia Pierre-Joseph. The substance of her statement was that the Defendant made admissions of liability at the hospital. Both applications were refused, and my reasons for doing so are outlined below.

[21] On January 23, 2024, the matter was scheduled for pre-trial review. By that date, the Claimant's witness statement had been served on the Defendant 420 days prior. Term 3 of the order issued on that date required any objections to evidence to be filed at least 14 days before the pre-trial review. This gave the Defendant an additional 41 days to raise objections. However, no objections were made by the Defendant within this period, including to the Claimant's expert report.

[22] The purpose of strict case management, with penalties for non-compliance, is to prevent delays such as the oral application to strike out. The Defendant had over 420 days to object but failed to do so, and then sought to raise objections on the day of trial, in violation of the court order.

[23] Allowing the oral application would be an attempt to bypass the sanctions of the order without seeking relief. The Defendant's failure to object did not mean the evidence became admissible, it simply meant that the Defendant had not assisted the court in identifying evidence that should not be admitted. The weight to be attached to the evidence would also be a matter for the court.

[24] In conclusion, granting the oral application would allow further case management at trial, forcing the Claimant to address objections that should have been made months earlier. Therefore, I refused the application.

[25] The court also questioned the admissibility of certain paragraphs in the Claimant's witness statements. The Claimant's counsel correctly did not defend clearly inadmissible parts. Based on this, the court struck out several sections of the Claimant's witness statement¹.

¹ Paragraphs 3, the word 'negligently' in line 4, paragraphs 7, 8, 9, 10, 13, paragraph 19, ninth sentence the words 'as well as the psychological effects which has caused,' and paragraph 20 of the Claimant's witness statement were all struck out by consent.

[26] I informed the Defendant's counsel that a similar approach would apply to all witness statements, and that they could address any cost implications resulting from the need to deal with evidential objections at trial.

[27] The second oral application made by the Defendant sought permission to comment on evidence in other witness statements. This application was also refused. The Defendant sought to comment on evidence relating to facts not pleaded in the Claimant's case, specifically an alleged admission of liability made by the Defendant at the hospital. This was never part of the Claimant's pleadings, and no application to amend the pleadings had been made.

[28] Evidence in a witness statement must be grounded in pleaded material facts. If the facts are pleaded, they can be admitted or disputed through the defence. If not pleaded, they should not be included in the witness statement unless the facts form the basis of an already pleaded material fact. The Defendant had the Claimant's witness statement since November 29, 2022, and did not object to the evidence that was not pleaded. Allowing comments on this evidence would essentially allow the Defendant to introduce new evidence or respond to matters that should not have been before the court, further violating the order and case management procedures.

[29] I refused the application to comment on the evidence, but informed both parties that I would consider the weight of the witness statement of Christencia Pierre-Joseph in written submissions.

[30] Due to the Defendant's non-compliance, which wasted trial time due to the court belatedly having to consider evidence whether that should have been excluded, I have decided to reduce the Defendant's costs by one quarter.

THE EXPERT REPORT:

[31] The Claimant submits that the Court cannot now entertain the issue of whether the expert report is admissible or not, as that aspect of the case was dealt with when the application to appoint Mr. Sargeant as an expert in accident reconstruction was made

without objection by the Defendant. I respectfully disagree. The appointment of Mr. Sargeant was based on his qualifications and experience, and the potential assistance an expert in his field could have provided to the Court in resolving an issue in the claim, namely liability. The matters raised in cross-examination, on which the Court specifically asked the parties to address in their further submissions, do not deal with the admissibility of the report or any part of it based on his appointment. They deal with his partiality. If the Court finds that the expert was not impartial, as I do in this case, does that finding affect the weight or admissibility of the report? That is the issue the parties were to address.

[32] The Claimant has not made any compelling arguments on this issue. I agree with the Defendant. Following the guidance of the United Kingdom Supreme Court in **Kennedy v. Cordia (Services) LLP**², the expert could have included in his report factual matters following the four (4) considerations set out in paragraph 44. I, however, disagree with the Defendant's assertion that if the expert in this case wanted to go further than the information provided to him and interview an eyewitness, he did not have to come back to the Court or, at a minimum, the parties, and indicate this and seek directions from the Court before embarking on that exercise. In my view, this marks the clear point where the expert crossed the line from being an independent, impartial expert to becoming a partial Claimant witness. The expert unilaterally decided to procure a statement from an eyewitness and arrogated to himself the authority to decide which parts of that statement supported his view of how the accident occurred, and so concluded. This, in my view, colors beyond separation the partiality of the expert, which affects the admissibility of the report.

[33] The Claimant deployed expert evidence in this matter. As stated above, the expert, in my respectful view, is not impartial, went far beyond what he was asked to give an opinion on, and delved into the function of the attorneys and the court. For this reason, I have rejected the expert report in its entirety. I do not consider the expert report to be

² [2016] UKSC 6

reliable or of any assistance, given his partisan approach, which is totally contrary to how an expert report and evidence ought to be.

[34] A comprehensive and complete statement of all principles applicable to expert reports, their contents, and the manner in which expert evidence is given, received, and weighed was provided by Lady Hale in **Kennedy v. Cordia (Services) LLP** (*supra*). I propose to quote only the relevant paragraphs.

[35] The expert fell into grave error when he, on his own volition, sought and/or obtained documents from a party or someone else connected with his assignment. Several of the documents referred to in the expert report are of unknown origin, as it is not stated in his report where he obtained these documents from. Moreover, it is not stated whether he obtained other documents that could or could not influence, or which were or were not considered by him. His letter of instructions referred to being supplied with both parties' witness statements and the police report. The expert referred, for example, to a police file without saying where or how he obtained it. In my view, this goes directly to his partiality. If the expert required further information or documents, he ought to have written to the Court, written to counsel, and, in the interest of transparency, disclosed all such communication. He has not.

[36] Additionally, the expert fell into a fundamental error when he arrogated to himself the power to summon, call, interview, record a statement, and determine whether parts of the statement he recorded—which was not verified by the alleged deponent—were true, and which parts were not to be relied on. In my view, this misstep demonstrates beyond any doubt that this expert did not understand his role or function and treated his assignment as some type of investigative exercise, supplementing the work of the police as an investigator, the role of counsel to marshal the evidence, and the role of the court to accept or reject the evidence. Again, this demonstrates his total lack of impartiality in carrying out his function. In **Kennedy** (*supra*) at paragraph 49, Lady Hale referred to **Davie v. Magistrates of Edinburgh**³ when the Court stated:

³ 1953 SC 34

[49] In **Davie v. Magistrates of Edinburgh** (p 40), the Lord President observed that expert witnesses cannot usurp the functions of the jury or judge sitting as a jury. Recently, in *Pora v. R* [2015] UKPC 9; [2016] 1 Cr App R 3 (para 24), the Judicial Committee of the Privy Council in an appeal from New Zealand, stated:

'It is the duty of an expert witness to provide material on which a court can form its own conclusions on relevant issues. On occasions, that may involve the witness expressing an opinion about whether, for instance, an individual suffered from a particular condition or vulnerability. The expert witness should be careful to recognize, however, the need to avoid supplanting the court's role as the ultimate decision-maker on matters that are central to the outcome of the case.

'Thus, while on occasion, in order to avoid elusive language, the skilled witness may have to express his or her views in a way that addresses the ultimate issue before the court, expert assistance does not extend to supplanting the court as the decision-maker. The fact-finding judge cannot delegate the decision-making role to the expert.'

[37] In my view, the actions of the expert in this case cannot be regarded as impartial. The effect of being partial goes directly to the admissibility of the report. At paragraph 51 of **Kennedy (*supra*)**, the Court, in addressing partiality in the context of admissibility, stated:

'Impartiality and other duties: If a party proffers an expert report which on its face does not comply with the recognized duties of a skilled witness to be independent and impartial, the court may exclude the evidence as inadmissible: *Toth v. Jarman* [2006] EWCA Civ 1028; [2006] 4 All ER 1276, paras 100-102. In *Field v. Leeds City Council* [2000] 1 EGLR 54, the Court of Appeal upheld the decision of a district judge, who, having ordered the Council to provide an independent surveyor's report, excluded at an interim hearing the evidence of a surveyor whom the Council proposed to lead in evidence on the ground that his impartiality had not been demonstrated. It is unlikely that the court could make such a prior ruling on admissibility in those Scottish procedures in which there is as yet no judicial case management. **But the requirement of independence and impartiality is in our view one of admissibility rather than merely the weight of the evidence.**'

[38] In addition to my finding that the expert was not impartial, I also find his methods to be questionable. In cross-examination, it was highlighted that the expert did not conduct

any direct inspections and relied heavily on photographs. While it is not necessary for an expert to visit the site of an accident to do a reconstruction, the Court, having visited the locus at the end of the trial, finds that the expert deprived himself of material context relevant to his opinions. In particular, the expert did not have the benefit of seeing the distance from the school to where the accident happened as it relates to both parties' evidence about the speed they were going. He did not have the benefit of noting the topography of the entire area, which is material to the speed they both allege they were going. He did not have the benefit of being in the presence of both parties and having them point out the point of impact and noting the distance the Claimant's motorbike traveled after the impact and where the Claimant himself ended up.

[39] Further, as stated above, the expert relied on an unsigned eyewitness statement, which was recorded by him and seems to be a narrative based on questions asked by him. This statement he then proceeded to analyze and accept certain parts without explaining why he rejected others. At a minimum, this unsigned eyewitness statement introduced an element of uncertainty independent of both parties' pleaded cases. This, in my view, is another fundamental error of the expert.

[40] On the scientific aspect of his report, the expert was totally discredited in cross-examination, as he could not answer material questions adequately. The expert's theory about the motorcycle's momentum being transferred to the car upon the collision, after impact, leading to a loss of stability, is flawed. It does not consider the material aspects of the evidence, which is undisputed. It is undisputed that the collision between the Claimant and the Defendant occurred when the Claimant's arm hit the Defendant's side mirror. That is the evidence. His theory does not account for that in concluding that the collision led to instability because of the transfer of momentum. In other words, if there is a head-on collision or a side swipe with one arm touching the mirror of the car, the momentum transferred would not be the same.

[41] The report suggests that, had the motorcycle crashed directly into the Mini Cooper, the rider would have been 'propelled over the side' of the car. This scenario implies that the rider's body would retain momentum while the motorcycle's momentum is halted by the

impact. Again, this oversimplified opinion does not consider several key features such as the angle of the collision and the weight of the vehicles. No evidence of either of these variables was led by either party. It is the expert's own material attached to his report that explained momentum, which undermines his conclusions.

[42] Having considered the expert evidence in its totality, I have come to three conclusions. First, the expert report in its entirety is inadmissible, as the expert is not impartial. Second, even if the report were admissible, it would carry little to no weight, as the methodology and opinion expressed are not in keeping with the literature the expert himself exhibited. Third, the Claimant will not recover any sums paid to the expert on account of the report being of no use in determining the issues in this case. If anything, it has unnecessarily complicated the issues for determination.

LIABILITY:

[43] The resolution of this case turns on a finding of fact to be determined based on the credibility of the parties and the other available evidence. Whether I accept the Claimant's version of how the accident happened, or whether I accept the Defendant's version, is central to the case. In resolving that issue, I have considered three sources of evidence: the evidence of the Claimant, the evidence of the Defendant, and the other independent evidence available but not the evidence of the expert, Mr. Mark Sargeant.

Claimant's Version:

[44] The Claimant's evidence is that on the day in question, he was riding his motorcycle along the road in the vicinity of the Dame Pearlette Louisy Primary School. As he was riding and passing the Defendant's parked vehicle, the Defendant pulled out from the parked position and collided with his motorcycle, causing the motorcycle to leave the road surface and fall into a drain, resulting in injury and damage. His evidence is that when he approached the Defendant's vehicle, it was stationary and behind another parked vehicle. He also states that the other lane of the dual carriageway, the oncoming traffic lane, was empty, so it was safe to overtake.

[45] His evidence is that as he was about to pass the Defendant's right door/fender, she moved to the right and into his path, causing the rear-view mirror of the Defendant's vehicle to come into contact with his arm. His evidence is also that the Defendant's tire came into contact with the front tire of his motorcycle, causing him to lose control and run off the road.

Defendant's Version:

[46] The Defendant's evidence is that, while proceeding in a northerly direction just past the KM2 call center, she observed a white motor car stationary in the left lane in which she was driving. She noticed the brake lights of the stationary vehicle were on, but no indicator was flashing. She saw someone sitting in the driver's seat of the vehicle. She slowed down, pulled to the right to pass the stationary vehicle, and as she did, she heard a noise at the right of her vehicle. She then became aware that the noise emanated from a blue motorcycle being ridden alongside the right side of her vehicle. Her evidence is that she became aware of the motorcycle at the same time it came alongside her vehicle, and within a split second, she noticed that the rider accelerated his motorcycle and made contact with her right rear-view mirror, causing it to become completely detached.

Independent Evidence:

[47] There was no evidence of any witnesses presented at the trial who witnessed the accident, although it seems there were at least two eyewitnesses: the driver of the parked vehicle in front of the Defendant and the person to whom she was speaking at the time of the accident.

[48] There are, however, two documents relevant to resolving liability: the Traffic Accident Report dated 12 January 2022 and the Estimate of Repairs to the Defendant's vehicle from Kell's Auto Service dated 16 July 2021.

[49] The police report under the heading 'How the accident happened' states facts consistent with the Defendant's version. It is stated: "Based on investigations conducted, the driver of motor car 9235 (the Defendant) maneuvered around a stationary vehicle within her lane. Jadiah Pierre injudiciously overtook motor car 9235 in the south lane."

[50] The measurements taken are important for assessing the point of impact and verifying both versions of how the accident happened. They are as follows:

1. Width of the road at the point of impact: 6.75m
2. Point of impact to the left side of the road: 5.8m
3. Point of impact to the right side of the road: 9m
4. Width of the northbound lane: 3.33m
5. Width of the southbound lane: 3.38m
6. Distance the Claimant's vehicle traveled from the point of impact: 33.6m
7. Distance the Defendant noticed the blue motorcycle: 33.6m
8. Distance the motorcycle traveled from the point of impact: 17.93m

[51] The estimate of repairs for the Defendant's vehicle notes damage to the vehicle, including: 'Right front fender, right front door, right front fender molding, bonnet, right front rim...'.

ANALYSIS OF LIABILITY:

[52] Although not material to liability, I note from the police report that at the time of the accident, the Claimant held neither a valid driver's license nor a certificate of insurance for the motorcycle he was riding. The details of the proceedings indicate that the Claimant 'is liable to be prosecuted for driving without due care and attention'.

[53] Having seen and heard the witnesses give their evidence, the Court finds the Defendant to be a more credible witness. She was honest, direct, and consistent in her testimony. I accept her testimony unreservedly.

[54] I do not accept the Claimant as a credible witness. His testimony on material aspects related to liability appeared rehearsed, and he was unable to explain several of his answers during cross-examination. The Claimant also became visibly agitated whenever questions were posed that suggested a different version of events than he was alleging. The Claimant was evasive in some of his responses, particularly regarding

the speed he was traveling at the time of the accident. When it was put to him that he was speeding, he quickly denied it but then stated that he was driving 'slowly' between 10 and 15 miles per hour. When confronted with the alleged statement of an eyewitness as reported by the expert, the Claimant said, 'He did not hear that', but then acknowledged, 'He realized that is what she is saying', in response to a matter inconsistent with his evidence. When it was pointed out to him that the Claimant could not be stationary and overtaking at the same time, his response was that he was 'already ahead', again something inconsistent with his case.

[55] When his alleged statement to the Defendant, 'You should not take it too hard', at the hospital was put to him in cross-examination, there was no denial that he made the statement. Instead, he disagreed that it was an admission of guilt or an acceptance that he was the cause of the accident.

[56] The evidence in this case strongly supports the Defendant's version of events as being more consistent with the facts. The police report, an impartial document, describes the Claimant's actions as 'injudicious', indicating poor judgment in attempting to overtake while the Defendant was maneuvering around a stationary vehicle. This characterization undermines the Claimant's assertion that his actions were safe and that the Defendant caused the collision by suddenly moving into his path. The police report's conclusion suggests that the Claimant's overtaking maneuver was reckless and poorly timed.

[57] The measurements taken at the scene provide important context. The point of impact was located 5.8 meters from the left side of the road and 9 meters from the right side, placing it near the center of the roadway. This position aligns with the Defendant's claim that she was moving around a stationary vehicle in her lane. If the Defendant had indeed swerved significantly into the southbound lane as alleged by the Claimant, the point of impact would likely have been closer to the far-right side of the road. The physical evidence does not support such a scenario, making the Defendant's account more credible.

[58] The damage to the Defendant's vehicle also supports her narrative. The right front fender, door, rear-view mirror, and fender molding were damaged, which suggests a

side-swipe collision rather than a frontal or direct impact. This type of damage is consistent with the motorcycle coming into contact with the side of the vehicle while attempting to overtake. If the Defendant had moved suddenly into the Claimant's path, the damage would likely show evidence of a more abrupt and forceful impact, which is not reflected in the repair report.

[59] The Claimant's version relies heavily on the assertion that the Defendant moved unexpectedly into his path. However, this claim is not supported by any independent evidence. The absence of eyewitness testimony from individuals further weakens the Claimant's account. In contrast, the Defendant's version is supported by both the police findings and the physical evidence, which align with her claim that the motorcycle approached suddenly and collided with her vehicle during an overtaking attempt.

[60] The timing and sequence of events also lend credibility to the Defendant's version. According to her account, the motorcycle became visible only as it was approaching alongside her vehicle. The measurements indicate that the motorcycle traveled 17.93 meters from the point of impact to where it stopped, suggesting significant force and speed at the time of the collision. This aligns with the Defendant's description of a sudden approach by the Claimant, catching her off guard while she was already maneuvering.

[61] In conclusion, the evidence overwhelmingly supports the Defendant's version of events. The police report, road measurements, and damage to the Defendant's vehicle all point to the Claimant's overtaking the Defendant while she was already overtaking a parked vehicle as the primary cause of the collision.

[62] The Claimant's account of the Defendant swerving into his path is not substantiated by the physical evidence or the circumstances of the accident. Based on the available information, it is more probable, and I find on a balance of probabilities, that the Defendant's account accurately reflects how the accident occurred.

[63] The other witnesses called by the Claimant, including Dr. Alcindor, save for Mr. Sargeant, all dealt with matters of quantum and not liability. Given my finding, there is no need to go into their evidence or make any findings on them.

[64] In the circumstances, the claim fails, and the counterclaim succeeds.

DAMAGES:

[65] The only damages the Defendant is entitled to on the counterclaim is damage to her vehicle. The sum claimed has been proven by the report from the garage which formed part of her evidence. Her damages are assessed in the sum of \$7,156.60 with pre-judgment interest at 3% per annum from June 15, 2021 to today and thereafter at the rate of 6% per annum till the date of payment.

[66] No damages are awarded for pain and suffering and loss of amenities as this has not been proven.

COSTS:

[67] The Claimant's claim was both for specified sums and unspecified sums. There was no application to fix any higher or lower value of the claim for the purpose of prescribed costs or to deviate from the usual prescribed costs regime. I therefore treat the Claimant's claim as having a value of \$50,000.00. The Defendant's costs have been reduced by 25% for the reasons set out above.

[68] The Claimant must therefore pay the Defendant's costs of the claim in the sum of \$7,500.00.

[69] On the counterclaim the Defendant is entitled to her prescribed costs on the value of the award made including pre-judgement interest (\$7,910.10) in the sum of \$1,582.02.

ORDERS:

[70] For the reasons set out above, I make the following orders:

1. The Claimant's claim filed on 4 November 2021 is dismissed.
2. The Claimant shall pay the Defendant's costs of the claim in the sum of \$7,500.00.
3. Judgment is entered for the Defendant against the Claimant on the counterclaim.
4. The Claimant shall pay the Defendant the sum of \$7,156.60 together with pre-judgment interest at the rate of 3% per annum from the date of accident to today's date in the sum of \$753.50.
5. The Claimant shall also pay the Defendant's costs of the counterclaim in the sum of \$1,582.02.



**Alvin Pariagsingh
Judge**

By the Court,

Registrar

Assisted by: Ms. Yeveeda Guinness
Judicial Research Assistant