

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim No. SLUHCV2020/0023

BETWEEN:

NEIL NOEL

Claimant

and

LISA VERNITA ALEXANDER

Defendant

APPEARANCES:

Mrs. Maureen John-Xavier for the Claimant
Mr. Sahleem Charles for the Defendant

2021: October 28;
November 26, 29; (written submissions)
2024: March 28.

JUDGMENT

[1] **CENAC PHULGENCE J.:** The claim arises out of a motor vehicular collision which occurred on Sunday, 3rd April 2017 sometime after 9:30 a.m. on the Micoud/Vieux-Fort Highway at the intersection near Up the Line, Micoud. The claimant, Mr. Neil Noel ("Mr. Noel") was riding his bicycle onto the Micoud/Vieux-Fort Highway coming from the junction of Up the Line, Micoud heading in a northerly direction towards Castries; while the defendant, Ms. Lisa Vernita Alexander ("Ms. Alexander") being the owner and driver of a Chevrolet motor car, registration number PC4284 ("the car"), was driving toward Vieux-Fort along the Micoud/Vieux-Fort Highway.

[2] The claimant seeks to recover from Ms. Alexander special damages in the sum of \$11,310.00 for medical and related expenses, general damages for personal injuries together with interest thereon at the rate of 6% per annum and costs. On the other hand,

Ms. Alexander disputes the claimant's claim and counterclaims against the claimant for special damages in the sum of \$35,412.00 for damage to the car, interest and costs.

- [3] The principal issue for determination by the Court, therefore, is whether the collision was caused by Mr. Noel or Ms. Alexander, or whether they both contributed to the cause of the collision and, if so, to what extent.

Evidence and Credibility of Witnesses

- [4] Two witnesses were called at the trial, the claimant and defendant.

- [5] The evidence as to the collision in Mr. Noel's witness statement is as follows:

"3. At approximately 9:30am I was riding my XTL Super Bicycle heading towards the Micoud/Vieux Fort Highway coming from the junction of Up the Line Micoud. As I entered into the highway, heading in the direction of Castries, the Defendant and driver of Motor Car registration number PC4284, who was coming from the direction of Castries, failed to keep to her left and proper side of the road and collided with me near the junction on my side of the road. ...

5. As I approached the highway, I slowed down and stopped at the highway. ...

6. When I arrived at the junction, before entering the highway, I looked up, down and also listened to see whether any vehicle was approaching. I did not see any vehicle was approaching. I did not see the Defendant's motor vehicle. I sounded the horn of my bicycle as I approached the junction. I specifically bowed my horn because on the date and time of the accident, at about 300 feet from the Up the Line junction to the line of the road on the left heading north had lots of overgrown trees and bushes. Those bushes, shrubs and trees create an obstruction for vehicles heading from Castries towards Vieux-Fort and vehicles heading from the Up the Line junction to Mon Repos/Castries.

8(e)... I had maneuvered my XTL Super Bicycle at the material time on to my left and proper side of the road and was riding on the major road away from the Defendant's lane at the time of the collision."

- [6] In cross-examination, Mr. Noel admitted that the junction he came from was a minor road and that he was aware of the traffic rule that vehicles on a minor road must stop and allow vehicles on the main road to pass. However when further cross-examined Mr. Noel did not agree that Ms. Alexander has the right of way at the time of the collision despite her driving along the main road. Mr. Noel stated that 'if you're already in the road you can make it'.

- [7] Mr. Noel also agreed that the reason he sounded his horn was because there were bushes and trees that would prevent him from seeing the main road.
- [8] Mr. Noel denies that he was coming out onto the highway without looking and with speed but states that it was only upon collision that he saw Ms. Alexander's vehicle and that upon colliding with the car he became unconscious and unresponsive.
- [9] On the other hand, in relation to the collision, Ms. Alexander in her witness statement states:
- “5. Whilst driving up the hill on my left and proper side of the road whilst approaching the junction of Up the Line Micoud I saw the Claimant Mr. Neil Noel suddenly emerge from the junction whilst mounted upon and riding his bicycle in a standing position onto the Micoud Vieux Fort Highway (“the Highway”) where I was driving. It happened very quickly as Mr. Neil Noel speedily, imprudently and without due care and attention emerged from the junction on to the Highway without stopping or keeping a proper lookout and came directly into the path of my motor vehicle creating an obstruction. I immediately steered my motor vehicle to the right to try to avoid colliding with Mr. Neil Noel as he injudiciously came directly into my path.
6. Despite me steering to the right, Mr. Neil Noel continued riding without stopping or slowing down and he continued into the path of my motor vehicle colliding with it as a result.
7. Upon the happening of the collision, Mr. Neil Noel fell onto my vehicle and then onto the road. In an effort to avoid driving over Mr. Neil Noel I continued to pull my vehicle to the right which caused me to then collide into a nearby wall on the opposite of the road which caused me to suffer loss and damage to my motor vehicle.”
- [10] Ms. Alexander in cross-examination agreed that she was familiar with the roadway in the area. She acknowledged that the accident occurred at the Up the Line junction on the Vieux-Fort Highway. Ms. Alexander agreed with the following statements made to her during cross-examination: (i) If one were approaching the junction driving to Vieux-Fort they would be driving on the left side of the road next to the junction; (2) That as one climbs the hill before they approach the junction there are lots of tall mature trees and bushes along that side of the road; (3) Just before climbing the hill there is the Volet Bridge and there are two minor roads on each side; (4) As one climbs the hill there are a few residential houses along the left side of the road; (5) At the junction where the accident occurred is the Micoud Village and in that area around that junction there are residential homes, a gas station with a fast-

food place, a bus shelter on the opposite side of the road police station, pumice pit, and schools.

[11] Ms. Alexander further accepted that anyone driving in that area would need to exercise some care as there may be vehicles coming out of the road, persons traversing the road and coming onto the road and things in the road at any moment and any reasonable driver would be expected to look out for such occurrences.

[12] Ms. Alexander denied seeing Mr. Noel before he emerged stating that she saw him after reaching to the top of the hill just before the gas station and just as she was about to pass the junction he emerged suddenly onto the road. The distance of 35 feet 3 inches from where she first saw Mr. Noel to the point of impact was put to Ms. Alexander and she disagreed with this distance and the corresponding measurement in the Traffic Accident Report. Under further cross examination Ms. Alexander agreed that she saw the defendant before the accident happened, but it was not 36 feet away and that when she saw him, Mr. Noel was just exiting the junction onto her side of the road. When asked, had Mr. Noel exited the junction, Ms. Noel replied yes.

[13] When Ms. Alexander saw Mr. Noel she swerved to the right. She did not blow the car horn, but she did slow down a little bit on the hill. Ms Alexander stated that she could not stop, as Mr. Noel was already so close that to avoid collision she had to move away.

[14] Ms. Alexander denies speeding and denies having been distracted by her speedometer. However, she explained that after the impact she was not able to control the car to a stop because she was trying to avoid Mr. Noel colliding with her and had to quickly move to the right side of the road. Ms. Alexander denied that had she remained on the left side of the road there would have been no collision.

[15] Ms. Alexander agreed that after the impact her vehicle travelled a further 78 feet before hitting a rock, that after the car hit the rock it went a further distance of 20 feet where it came to a stop on the side of the road in the gutter.

- [16] Ms. Alexander accepted that most of the damage to the car occurred after she collided with the rock. However, she denied the suggestion that the extent of the damage was not as a result of the negligence of Mr. Noel but because she was driving at a high-speed causing her to run off the road and into the rock.
- [17] Ms. Alexander further denied that had she stopped after the collision she would not have suffered the extent of the loss suffered. She disagreed with the suggestion that had the car not collided with the rock it would not have sustained the damages that it did.
- [18] I note that Mr. Charles has indicated in his submissions that he found Mr. Noel not to be credible as Mr. Noel responded that he could not fully read, could only read small words when asked whether he could read but then proceeded to clearly and audibly read the sentence he saw. Mr. Charles' contended that whereas Mr. Noel said he was illiterate, it was evident that he was not and as such he attempted to mislead the Court.
- [19] Mr. Noel in his witness statement does not say he is illiterate. He says, "I cannot read and write properly. I cannot explain myself very well." In cross-examination, he says that he 'knows the minor words not the big words'. That is how he perceives his reading ability. The fact that he read the sentence does not in anyway impact his credibility in my view. It is very common for people to say they are illiterate but not mean that they cannot read at all. Their perception of their reading ability may just be very low.
- [20] Having seen and heard both Mr. Noel and Ms. Alexander under cross-examination, I am satisfied that both parties presented themselves as credible witnesses. Mr. Noel was very consistent in his cross-examination. Ms. Alexander, but for a few discrepancies with the measurements and her questioning of those in cross-examination, was also consistent in her evidence.

Traffic Accident Report

- [21] It is noteworthy that both Mr. Noel and Ms. Alexander at times have challenged parts of the Traffic Accident Report whilst also respectively agreeing with parts of it. Mr. Noel for instance relied on the point of impact illustrated in the report which places the collision in the northbound lane.
- [22] Ms. Alexander agreed mostly with the contents of the Traffic Accident Report. Particularly she agreed that the width of the road at the point of impact was 24 feet 10 inches and that the measurements show that the accident happened more to the right side of the road. In her witness statement Ms. Alexander also relied on the report to state:
- “8. I have seen a copy of the Police Report dated 15th August 2018 which establishes that Mr. Neil Noel was driving without due care and attention. This report supports my account of how the accident occurred and clearly establishes Mr. Neil Noel as being responsible for causing the accident as it states:
- “An investigation suggests that the cyclist Neil Noel, failed to come to a halt at the junction, injudiciously emerged onto the highroad and collided with the front left side of motor car PC4284. Motor car PC4284 then ran-off the road into a ditch and came to a halt after colliding with a rock on the right side of the road.”
- [23] Mr. Noel by the very matter of bringing this claim has challenged the findings of the investigating officer whilst Ms. Alexander has also questioned the accuracy of the report under cross examination.
- [24] It is unfortunate that Police Constable 310 Alexander the investigating officer was not called as a witness in this matter. The Officer as an independent witness may have been helpful in clarifying some aspects of the collision. However, the Traffic Accident report of the collision by Royal Saint Lucia Police Force dated 3rd August, 2017 (“the Accident Report”) that was admitted into evidence and relied on by both parties will nonetheless prove helpful.
- [25] The measurements in the Accident Report (some of which are set out below) will aid in determining the issue of the speed of the car and possible negligence of Ms. Alexander:

- Width of road at point of impact – 24’ 10”**
- Point of impact to the left side of the road – 13’ 1”**
- Point of impact to the right side of the road – 11’ 9”**

**-Point of impact to point of impact No.2 on rock by PC4284 – 78’
-Distance from rock to the final resting place of PC4284 – 20’**

Claimants’ case

- [26] It is Mr. Noel’s case that Ms. Alexander is the cause of the collision thus negligent or alternatively that Ms. Alexander substantially contributed to the collision. Counsel for the claimant Mrs. Maureen John-Xavier (“Mrs. Xavier”) invited the Court to accept that Ms. Alexander saw Mr. Noel before he emerged onto the highway for two reasons: (i) the Traffic Accident Report records that Ms. Alexander first saw Mr. Noel from a distance of 36 feet 3 inches”, and (ii) that Ms. Alexander should be held to her pleadings wherein she states that she “...saw the Claimant Mr Neil Noel suddenly emerge from the junction whilst mounted upon and riding his bicycle onto the Micoud/Vieux-Fort Highway where I was driving”
- [27] Mrs. John-Xavier submits that Ms. Alexander was negligent on the basis that: (i) in her evidence Ms. Alexander stated that, “Although I was driving within the speed limit at about 40 kilometres per hour, Mr. Neil Noel’s rapid and sudden emergence form the junction into my path made it impossible for me to stop as he was already so close to me” and (ii) under cross examination, Ms Alexander was asked, whether she was able to determine the speed at which she was driving, because she had looked at her speedometer before the accident and she responded ‘yes’. I do note however that Ms. Alexander’s response was not ‘yes’ but ‘probably.’
- [28] Mrs. John-Xavier drew the Court’s attention to **Saunders v Adderley**¹ where the Board of the Judicial Committee of the Privy Council in upholding the decision of the trial judge opined that:
- “The judge also found that the Defendant had been negligent in that he had said that at the time of the accident he was looking at his speedometer.”
- [29] However, **Saunders v Adderley** is not applicable to the facts of this case as Ms. Alexander unlike the defendant in that case did not say that she was looking at her speedometer at

¹ [1999] 1 WLR 884

the time of the accident. What she says in response to the question whether she looked at the speedometer is not 'yes' but 'probably' and then when asked the question a second time Ms. Alexander says 'If I looked at the speedometer it would not impact vision that much. As such a finding of negligence on this basis must fail.

[30] Mrs. John-Xavier further submits that Ms. Alexander was driving too fast in all the circumstances of the case because the speed at which she was driving did not permit her to slow down, or to stop and had no time as was ample to enable her to take her foot off the accelerator and apply her brakes.

[31] Counsel relied on the authority of **Page v Richards & Draper**² where the court stated that:

"It seems to me that when a man drives a motor car along the road, he is bound to anticipate that there may be people or animals or things in the way at any moment, and he is bound to go not faster than will permit of his stopping or deflecting his course at any time to avoid anything he sees after he has seen it. If there is any difficulty in the way of seeing, as for example, a fog, he must go slower in consequence. In a case like this, where a man is struck without the driver seeing him, the defendant is in this dilemma, either he was not keeping a sufficient lookout, or if he was keeping the best lookout possible then he was going too fast for the lookout that could be kept."

[32] Counsel further submits that prior to the accident the fact that Ms. Alexander did not slow down, or stop is indicative that she was driving at a speed which did not allow her to react in time to avoid the accident. In support of this submission Mrs. John-Xavier relied on the decisions of (i) **Ryan Richards v Michael Francois**³ where the court said thus:

"The Defendant's Counsel submitted that there was no evidence that the defendant was speeding. However, I do not agree with this position. In my judgment, the impact of the collision of the Defendant's vehicle, which were the damages to the bonnet and windscreen as depicted by the post-accident photographs, the nature and extent of the injuries sustained by the Claimant, which were to his left leg, left arm and shoulders, and the point of stoppage by the Defendant after the impact, which was approximately 40 feet past the point of the collision, are not consistent with the Defendant driving at a speed of 30-35 mph but more consistent with a vehicle travelling at a greater speed. Even if I accept any of the Defendant's version that the Claimant had alighted the bus directly into his path, if he was driving at a

² Referred to at paragraph 29 of the case of Gailius Mathurin et al v Andrew Paul - Claim No. SLUHCv2002/0867 at para [29].

³ GDAHCV2010/0156, delivered 7th November 2013, unreported at para [16].

speed of 30-35mph, he ought to have had a reasonable chance of avoiding the collision since his vehicle was 5 feet wide and he had free space of 10 feet in the roadway to manage his vehicle to avoid the collision. I therefore find that the Defendant was driving far in excess of 30-35 mph and speeding.”

and **Wayne Stewart et al v Richard Giraudy**⁴ where the court said:

“In my judgment the claimant was also negligent. He could have avoided the accident. He saw the defendant emerging from the exit some distance away. He says he was about one car length away he did not stop only slowed down. In my opinion he was unable to stop because of the speed at which he was travelling.

“whilst there is no statutory duty generally to foresee that another will be negligent there are instances even so where a prudent man is to take precautions by anticipating the negligence of others, especially where experience has commonly shown such negligence to be likely or where resulting damage can be minimized”.

[32] Mrs. John-Xavier also invited the court to consider other factors from which the Court may infer that Ms. Alexander was driving with speed at the material time namely, (i) Ms. Alexander’s inability to stop after the accident; (ii) the impact and nature of the injuries sustained by Mr. Noel (iii) the distance Ms. Alexander travelled after colliding with Mr. Noel before hitting the rock, being 78 feet; (iv) the distance from the rock to the final resting place of Ms. Alexander’s car, being 20 feet; and another ground (v) which I interpret to mean the distance Ms. Alexander first saw Mr. Noel, being 36 feet 3 inches.

[33] Mrs. John-Xavier also submits that Ms. Alexander having given evidence that she was very familiar with the area where the accident occurred and was aware of the surrounding circumstances at the time, if her version of events that Mr. Noel suddenly emerged from the minor road into the major road is correct, then it would mean that Ms. Alexander did not keep a proper look out.

[34] Mrs. John-Xavier argues that Ms. Alexander ought to have reasonably foreseen that there was a risk that a person might, however foolishly, attempt to cross the road and ought to

⁴ SLUHCV2009/0424, delivered 30th August 2010, unreported.

have looked out for that occurrence. Counsel for the claimant again relies on the dicta of the court in **Page v Richards & Draper**.

[35] On the other hand, Mr. Sahleem Charles (“Mr. Charles”), Counsel for Ms. Alexander argues that it is accepted as well established law that the duty and the standard of care applicable to drivers of vehicles on or near highway is to drive with the skill and care of a reasonably competent and experienced driver.⁵

[36] Mr. Charles submits that Ms. Alexander in operating her vehicle on the said date displayed the degree of skill and care of a reasonably competent and experienced driver.

[37] Counsel relies on the decision of Thom J in **Semol May v Lancelot Stevenson**⁶ quoting from Rawlins J in the case of **Cheryl Edwards (Administrator of the Estate of Janique Lewis) v Ethel Mills**⁷ explained the duty of care of drivers.

[38] Mr. Charles argues that it is clear that Ms. Alexander faced with the sudden emergency of Mr. Noel emerging onto the main road did the only thing she could have done which was to swerve away from him in an effort to avoid the collision. This was a prudent and reasonable reaction in the circumstances of this case.

[39] In his submissions, Mr. Charles argues that Mr. Noel has failed to establish sufficient evidence to prove that Ms. Alexander is liable for the accident and accordingly his claim ought to be dismissed. He further argues that there is no negligence or contributory negligence on Ms. Alexander’s part as she at all times drove with due care and attention as a reasonable driver would in the circumstances.

[40] I however disagree with this submission that there was no negligence on Ms. Alexander’s part. Ms. Alexander accepted that she collided with Mr. Noel on the right side of the road.

⁵ *Nettleship v Weston* [1971] 3 All ER 581.

⁶ SVGHCV2005/0008, (delivered 3rd July 2006, unreported).

⁷ ANUHCV1998/0168, (delivered 28th November 2002, unreported).

The Traffic Accident Report also places the point of impact on the right side of the road. It was Ms. Alexander's evidence that she swerved based on the sudden emergence of Mr. Noel from the junction in an attempt to avoid Mr. Noel but her actions were unsuccessful and there was indeed a collision. Ms. Alexander's actions cannot be said to have been that of a reasonable and prudent driver. She said she swerved to the right because she thought Mr. Noel having seen her, would have stopped. However, to my mind, she should have anticipated that moving to the right would have placed her squarely in Mr. Noel's path if he did not stop. A prudent driver would have kept to the left. In the circumstances, I find that Ms Alexander was negligent having failed in her duty of care to keep a proper look out for other road users and failing to take prudent and reasonable actions to avert the collision.

- [41] Ms. Alexander further agreed that prior to collision she only slowed a bit on the hill. However, upon collision and thereafter she never used her brakes or attempted to come to a stop. As a result, her vehicle travelled a further 78 feet before hitting a rock and then a further 20 feet before coming to a stop. I therefore find that Ms. Alexander was negligent in that she breached her duty of care to drive at a speed and in a manner that was safe in the circumstances.

Defendant's case on the Counterclaim

- [42] It is the case for Ms. Alexander on her counterclaim that Mr. Noel rode his bicycle from the minor road onto the highway without stopping at the junction and that he was negligent in causing the accident given the circumstances prevailing on the said road at the said time. Ms. Alexander's vehicle sustained damage as a result of the accident caused by Mr. Noel and as such she is entitled to damages, interest, cost and or any further or other relief on her counterclaim.
- [43] Mr. Charles submits that Mr. Noel was the one who was negligent in failing to keep a proper lookout; failing to act prudently by emerging from a minor road onto a major highway without stopping; driving into the path of Ms. Alexander's vehicle; failing to stop, slow down, swerve, brake or to manage his bicycle so as to avoid the collision; failing to have sufficient or any regard for other motor vehicles reasonably on the said road at the said time; and riding his

bicycle at a speed which was excessive, having regard to the conditions prevailing on the said road at the said time. As such Mr. Noel is liable in negligence for the damage sustained to Ms. Alexander's vehicle. Therefore, Ms. Alexander is entitled to damages as sought in her counterclaim against the claimant.

[44] Mr. Charles further argues that Mr. Noel was traversing from a minor road and therefore had a duty of care to other road users to ensure the right of way of those traversing along the main road was not disturbed. Counsel submits that the Court in assessing this case on a balance of probabilities ought to take into account that Mr. Noel chose to emerge onto the Highway just after admitting that he had no visibility of oncoming traffic. It was incumbent on him to ensure that he exercised due care to ensure that it was safe before entering onto the Highway.

[45] Mr. Charles contends that Mr. Noel was the sole cause of the collision as he negligently rode his bicycle from the minor road onto the highway and injudiciously created an obstruction to Ms. Alexander's vehicle.

[46] I do not agree that Mr. Noel was the sole cause of the accident for the reasons mentioned earlier in this judgment. However, I do agree that Mr. Noel did owe a duty of care to ensure that it was safe to enter onto the Highway from the minor road. I find that Mr Noel by his own admission agreed that he could not see the main road due to the bush. I also find that his emergence onto the roadway did injudiciously create an obstruction to Ms. Alexander's oncoming vehicle and agree with the submission of Counsel and that Mr. Noel was negligent and in breach of his duty of care.

Discussion

[47] The starting point is the relevant Articles of the **Civil Code of St. Lucia**⁸, which states:

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

⁸ Cap. 4.01, Revised Laws of Saint Lucia, 2020.

986. He is responsible for damage caused not only by himself, but by persons under his control and by things under his care.”

[48] It is a well settled principle of law that all drivers of motor vehicles have a duty to exercise due care when driving on the road that is encapsulated in the often-cited passage of Rawlins, J. in **Cheryl Edwards, Administratrix of the Estate of Janique Lewis v Ethel Mills**⁹, thus:

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

And in **Halsbury Laws of England**¹⁰ the duty is explained in the following terms:

“When two persons on the highway are so moving in relation to one another as to involve 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.”

Apportionment of Liability

[49] This is a case where both the claimant and defendant failed in their duty of care to each other. Having found that both Ms. Alexander and Mr. Noel were negligent and that they are jointly responsible for the collision and the resultant damage caused, it is now for the Court to determine the extent of their respective responsibility in accordance with the law. Article 989D of the **Civil Code of St. Lucia** is instructive and provides:

“(1) In this article,—
...

⁹ Claim No. ANUHCv1998/168, (delivered 3rd July 2006, unreported) at para [17].

¹⁰ 10th Ed. Vol. 34 para. 44.

“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.”

[50] Counsel, Ms. John-Xavier argues that in considering the issue of contributory negligence, if the Court is to make a finding that Mr. Noel contributed to the accident, then a greater proportion of the liability should lie with Ms. Alexander for the following reasons.

1. Ms. Alexander was very familiar with the area and knew she was approaching a residential community.
2. She accepted under cross examination that given the surrounding circumstances which existed at the time, a reasonable driver would expect a person or vehicle to come onto the highway at any time.
3. Ms. Alexander drove at a speed which prevented her from reacting in time or at all.
4. Ms. Alexander agreed with the Police measurements which states that she first saw Mr. Noel from a distance of 36 feet 3 inches before the accident (although she denied the distance under cross examination).
5. For whatever reason, she failed to see Mr. Noel until the very last moment and took no action at all to avoid him.
6. Prior to the accident, her eyes were on the speedometer and not on the road. A lot could have happened whilst her eyes were off the road.
7. Ms. Alexander was driving a car which can be a potentially dangerous and lethal weapon.
8. Ms. Alexander did nothing to avoid the accident. She did not sound her horn, slow down or stop. She simply swerved right and alleged that she continued to swerve right in the same direction Mr. Noel was heading or riding in order to avoid driving over him.

[51] In considering Ms. Alexander's counterclaim, Mrs. John-Xavier further argues that the level of contribution towards Ms. Alexander's loss should be apportioned differently, and that she should bear the greater value of the apportionment for the following reasons:

1. Under cross examination she stated that most of the damage to her motor vehicle were caused after her vehicle made impact with the rock.
2. Had Ms. Alexander been driving slowly or had she stopped, her vehicle would not have sustained the extent of the damages that it did. She was unable to stop after colliding with Mr. Noel because she ran off the road due to her speed.
3. In her evidence, Ms. Alexander stated that Mr. Noel hit her vehicle on the front left side. The survey report shows that the only damage to the vehicle on the left is the left headlamp. On the basis that Mr. Noel fell on the bonnet and windscreen, the claimant is prepared to accept that damages to those parts could have been caused by the impact with Mr. Noel. However, it is questionable and unknown whether any further damage was caused after Ms. Alexander's vehicle made contact with the rock.

[52] Conversely, Mr. Charles argues on behalf of Ms. Alexander that that there is no contributory negligence on her part as she at all times drove with due care and attention as a reasonable driver would in the circumstances surrounding the accident.

[53] Having considered the witness statements, the evidence of the witnesses and their demeanour in cross-examination, and the Accident Report, I find that both parties are responsible for the collision and were both negligent.

[54] Ultimately, though, I find that the collision occurred on the right side of the road which in the circumstances was not Ms. Alexander's side of the road, she having failed to keep a proper look out for other road users having failed to slow down, stop or drive at a speed and in a manner so as to avoid collision with Mr. Noel and the subsequent further damage to her vehicle. She therefore would bear the greater proportion of liability.

[55] I would therefore apportion liability at 75% to Ms. Alexander and 25% to Mr. Noel.

Assessment of Damages

Special Damages

- [56] Both Ms. Alexander and Mr. Noel seek compensation for special damages sustained as a result of the collision. Special damages in the sense of monetary loss which they have sustained up to the date of trial must be pleaded and particularized. "It is plain law that one can recover in action only special damages which has been pleaded and of course proven".¹¹
- [57] With respect to his claim for special damages Mr. Noel seeks the sum of \$200.00 for the Traffic Accident Report, medical expenses in the sum of \$4,440.00, expenses for medical reports in the sum of \$1,770.00, domestic assistance/home help in the sum of \$4,500.00 and ambulance fees in the sum of \$400.00 totalling \$11,310.00.
- [58] It is noted however that in the receipts exhibited by Mr. Noel, Invoice Nos. 6851 and 6704 from the Doxa Clinic were duplicated and thus these duplicated amounts will not be considered in the assessment of Mr. Noel's medical expenses. The amount claimed for the medical report from Doxa Clinic also appears on several invoices. It is important that in personal injuries claims that CPR 8.10(6) is complied with, and a schedule of special damages is provided. Simply providing a total figure with a bundle of receipts which are not itemised makes it difficult to properly assess the loss claimed.
- [59] Further, Mr. Noel claims that as a result of his inability to perform his activities of daily living, he required the assistance of a carer. He claims the sum of \$50.00 daily to assist with his mother who cared for him for about 2 months. In the statement of claim he claims this daily amount for 90 days but in his witness statement, Mr. Noel claims for 'about 2 months and for an unspecified 'months which followed.'
- [60] Counsel for Mr. Noel has submitted an apt passage of the dicta of Lord Goddard CJ in **Bonham-Carter v Hyde Park Hotel**¹² where His Lordship states that,

¹¹ Per Diplock LJ in *Likew v Samuels* (1963) WLR 991 at 1006.

¹² (1948) 64 T.L.R. 177 at 178.

“Plaintiff’s 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”.

Mrs. John-Xavier submits that Mr. Noel has pleaded and is able to prove the items of special damages.

[61] Mr. Charles argues that Mr. Noel has failed to lead any evidence to support his pleading that he is entitled to special damages for domestic assistance/home help. In this instance I agree with Mr. Charles that this amount should not be allowed, Mr. Noel having failed to sufficiently prove his claim for home assistance. At least a witness statement from the carer would have assisted.

[62] On the totality of the receipts exhibited by Mr. Noel I award the sum of \$6,150.00 to him as special damages comprising:

(i) Traffic Accident Report	\$200.00
(ii) Medical Expenses	\$4,330.00
(iii) Medical Reports	\$1,220.00
(iv) Ambulance services	\$400.00

[63] The front end and roof of Ms. Alexander’s car were smashed in with major damage sustained to the roof panel, front windscreen, right front fender, bonnet, right headlamp, left headlamp, and right wing mirror fender garnish.

[64] Due to the extent of the damage sustained to the vehicle it was assessed to be a complete loss. In their report Mauricette’s Auto Repairs Inc. has assessed the pre-accident value of her vehicle to be \$50,000.00 and the salvage value to be \$16,000.00. The value of the vehicle therefore \$34,000.00.

[65] Ms. Alexander also claims towing fees in the sum of \$850.00 and survey fees in the sum of \$562.00 totalling \$35,412.00 and produces invoice number 7906 dated 19th April 2017 and invoice number 16742 dated 18th April 2017 in support respectively. Both invoices are in

the name of Saint Lucia Insurances Limited. At paragraph 10 of the counterclaim and paragraph 14 of her witness statement, Ms. Alexander explains that Saint Lucia Insurances as her insurer by way of subrogation is entitled to the benefit of this claim hence the invoices being in their name.

[66] This is said to be a subrogation claim which is in simple terms the right of one's insurance company under the policy of insurance after they have paid a covered claim to request reimbursement from the party who is at fault. Ms. Alexander presented no evidence of what was actually paid by the insurer which to my mind is important in a subrogation claim.

[67] I remind Counsel that special damages relate to out-of-pocket expenses incurred. None of the two invoices provided by Ms. Alexander for towing and survey fees shows that these expenses were actually incurred and paid. Consequently, these amounts are not awarded to Ms. Alexander.

[68] Ms. Alexander is awarded special damages in the sum of \$34,000.00 for loss and damage sustained to her motor car as a result of the collision.

General Damages

[69] A claim was also made by Mr. Noel for damages for the injuries sustained, pain and suffering, and loss of amenities. The evidence of Mr. Noel in respect of his injuries, the management of same and his recovery was not challenged. Mr. Noel at the time of the incident was 20 years of age and lost consciousness after the collision.

[70] The medical report of Dr. Sherwin James of the St. Jude Hospital indicated that Mr. Noel was brought in unconscious on the morning of 3rd April 2017. There was a devolving injury to the right side of the neck approximately 12 cm long extending to the posterior of the neck, a laceration down the thoracic spine region approximately 18 cm long, superficial abrasions to the lateral right arm, elbow and forearm as well as superficial abrasions to the left thigh, left knee, left leg and left foot.

- [71] On the 10th of October 2017, Dr. Olusina Adesanya saw Mr. Noel and indicates in his report that Mr. Noel suffered tremors at rest, especially in his upper limbs, decreased neck and right shoulder movement, 12 cm long hypertrophied scar tissue from the right side of the neck to the posterior aspect of the neck, 18 cm long hypertrophied scar tissue from the base of the skull to the lower aspect of his thoracic spine, scar tissue on the lateral aspect of his right arm, elbow and forearm and scar tissue on his left knee, leg and foot. On the 27th October 2017, Mr. Noel was re-assessed at the St. Jude Hospital where he was found to have a keloid formation to the right side of the neck extending to the rhomboid area.
- [72] The medical report of Dr. Curby Sydney dated the 6th May 2019 indicates that Mr. Noel did a CT scan on the 3rd April 2017 which showed mild diffuse swelling consistent with a diffuse Axonal injury grade two but that there was no lesion requiring brain surgery and Mr. Noel was diagnosed with having suffered severe head injury at the time of the accident. Dr. Sydney further reported that the EEG test performed on the 6th of March 2019 reported normal indicating that Mr. Noel was at low risk of developing post traumatic seizures. Dr. Sydney also indicates that Mr. Noel requires long term follow up for his condition including but not limited to consultations, physiotherapy and occupational therapy.
- [73] The report of Dr. N. A. Dagbue dated the 9th of January 2021 states that Mr. Noel last presented himself on the 28th of May 2019 where he was found to be in stable condition, the soft tissue injury of the upper back and neck had healed well, leaving some permanent scars. Dr. Dagbue indicated that the blunt head trauma with loss of consciousness for two days is severe head trauma and Mr. Noel will likely have headaches off and on for the rest of his life but this will improve to an extent with time.
- [74] In his witness statement Mr. Noel states that he worked as a labourer in the construction sector but was not employed at the time of the collision. He says he has been unable to work since the accident as a result of his injuries. Mr. Noel further states that he is unable to carry weight, he continues to suffer from recurrent and persistent headaches, trembling of the feet, weakness in the upper right limb and difficulty urinating. He says he is able to perform most basic daily activities like bathing, washing, and cooking but with some difficulty

and that he could not lift his upper right limb to perform overhead activities. Dr. Dagbue in his report of 9th January 2021 confirms that Mr. Noel cannot continue to do the job of construction worker 'at this time' with his residual symptoms and can only participate in non-strenuous activities.

[75] Dr. Dagbue in his report has evaluated Mr. Noel's impairment over the two years since the accident and states that Mr. Noel has a 30% whole person impairment because of his injuries (persistent symptoms of head injury and Brachial Plexus injury).

[76] In relation to loss amenities, Mr. Noel at paragraph 21 of his witness statements states that as a result of his injuries he can no longer do the following: (a) carry anything heavy such as a 5-gallon bucket of water or cement or a filled tank of gas; (b) sift sand, mix sand with a spade or lift a wheelbarrow; (c) ride his bicycle; (d) engage in sporting activities such as football and cricket; (e) climb trees such as mango, coconut etc; (f) make fudge and other condiments to make extra money as the constant stirring which is required to make them causes unbearable pain in his neck, shoulder and arm; (g) do any of the household chores such as cleaning windows or using a weed eater. Mr. Noel also points out that prior to his accident he was a member of the Lombard Sports Club.

[77] Counsel both aptly refer the court to the seminal authority of **Cornilliac v St. Louis**¹³ in respect of the factors to be considered in arriving at an award of damages for personal injuries that is: (a) the nature and extent of injuries sustained; (b) nature and gravity of the resulting physical disability; (c) pain and suffering; (d) loss of amenities; (e) the extent to which pecuniary prospects are affected.

[78] The Court is guided by the dicta in **Wells v Wells**¹⁴ in arriving at the amount of the award where Lord Hope of Craighead said:

"The amount of the award to be made for pain, suffering and loss of amenities cannot be precisely calculated. All that can be done is to award such sum, within the broad criterion of what is reasonable and in line with similar awards in

¹³ (1965) 7 WIR 491.

¹⁴ (1998) All ER. 481.

comparable cases, as represents best cases estimate of the plaintiff's general damages."

[79] Mrs. John-Xavier relies on the following cases:

Lazarus Kenny Phillip v Linto Martyr et al¹⁵ where the claimant, a mason, suffered a neck pain, a 3 cm laceration over the eyelid, polytrauma, c-spine injury, a brain contusion, ethanol intoxication and a clavicular fracture. The claimant was unable to work in excess of three years. The claimant sought general damages including damages for loss of income. He was awarded general damages of pain and suffering in the sum of \$80,000.00 and loss of income in the sum of \$48,000.00.

Akim Morain v Devon Pierre¹⁶ where the claimant suffered severe head injury, a fracture in the lateral aspect of the right orbit of the head, intra ventricular haemorrhage of the left lateral ventricle with multiple foci of contusion in both cerebral hemispheres and post traumatic subarachnoid haemorrhage in the cisterns of the cerebral convexities. As a result of his injuries the claimant suffered numerous complications including cerebral salt wasting, chest and bladder infections. He was awarded general damages of \$180,000.00 for pain and suffering and loss of amenities.

[80] Mrs. John-Xavier argues that the Mr. Noel is therefore entitled to an award of \$140,000.00 for damages for pain and suffering and loss of amenities. She does not indicate how much would be attributed to each head.

[81] Mr. Charles, on the other hand argues that Mr. Noel's injuries would warrant a maximum award of \$40,000.00 for pain and suffering and loss of amenities. Counsel relies on a few authorities including the case of **Anselma Mederick v Sylvester James Of Marigot et al**.¹⁷ In this case, the claimant suffered headaches to the left side of the head, blurred vision, and numbness; cerebrum concussion; whiplash injury; 1 cm laceration to the face and swelling of left upper lip; neck pains; back pains; pain to the right third finger; tingling to calves and

¹⁵ SLUHCV2015/0347.

¹⁶ GDAHCV2017/0241.

¹⁷ SLUHCV2018/0511.

cramps to legs; pain to soles and occasional swelling to left foot; bruising palmar aspect of mucosa left upper inner lip; post-traumatic brain injury syndrome; cervical spondylotic myelopathy decompensation by trauma (MVA) causing whiplash injury and cordial concussion. The claimant was awarded EC\$55,000.00 in general damages for pain and suffering.

[82] Counsel also considered the authority of **Howell Fontenelle v Jn. Baptiste Marville**¹⁸ where the claimant suffered a temporary partial disability of 70% over 3 months during which he was unable to work. His medical report further stated that he would suffer a permanent disability of 20% because of anticipated stiffness and inability to fully flex his affected limbs. He was awarded general damages in the sum of EC\$40,000.00 for pain and suffering.

[83] I have considered the guidelines set out in **Cornilliac v St. Louis** in assessing an award of general damages, the evidence of Mr. Noel and in particular the medical reports of Dr. Curby Sydney and Dr. Dagbue and the cases referred to by Counsel.

[84] While the injuries suffered by Mr. Noel do not align entirely with any of the authorities cited by Counsel, I find that the injuries sustained by the claimant in **Lazarus Kenny Phillip v Linto Martyr et al** to be most similar in nature and extent to Mr. Noel's injuries except that I find Mr. Noel to have suffered less severe injuries than those of the claimant Mr. Phillip, Mr. Noel not having suffered any fractures but more severe than the claimant in the **Anselma Mederick** case. I also note that the awards in these two cases were only with respect to pain and suffering and did not include an award for loss of amenities.

[85] At the time of the accident Mr. Noel was 20 years old. Given the injuries he sustained, his age and his evidence of the impact on the things he used to do, playing sports, making his condiments to sell, among others, I accept that his quality of life has been impacted. I do not agree with Counsel Mr. Charles that the fact that Mr. Noel did not have evidence of his being a member of the sports club is a reason to discount his evidence of him not being

¹⁸ SLUHCV2011/083.

able to play sports like he used to. I accept Mr. Noel's evidence of the loss of amenities as this has remained unchallenged.

- [86] Accordingly, bearing in mind all the factors and considering the authorities cited including their vintage, I award Mr. Noel general damages in the sum of \$75,000.00 for pain and suffering and \$10,000.00 for loss of amenities.

Interest and Costs

- [87] Both parties have claimed interest and costs in their respective claims. I propose to treat with those matters briefly before making my final award. The **Civil Code of St. Lucia** in Article 1009A empowers the court on rendering judgment to make an award of interest for such period between the date of the cause of action and the date of judgment at such rate as the court thinks fit. In relation to the awards of interest I am further guided by the Court of Appeal decision of **Martin Alphonso et al v Deodat Ramnath**¹⁹ affirmed and applied in **Ruth Dubois et al v Francis Maurice**.²⁰

Order

- [88] Based on the foregoing discussion, I make the following orders:
- (1) Judgment is entered for the claimant against the defendant on the claim and for the defendant against the claimant on the counterclaim with apportionment of liability being 25% as to the claimant and 75% as to the defendant.

In relation the claimant's claim:

- (2) The defendant shall pay the claimant special damages in the sum of **\$4,612.50** (which is the total amount of special damages of \$6,150.00 discounted by the claimant's 25% contribution), together with interest thereon of 3% per annum from the date of the accident, 3rd April, 2017 to the date of judgment.

¹⁹ [1996] 56 WIR 183.

²⁰ SLUHCVP2013/0007 (delivered 18th May 2018, unreported).

- (3) The defendant shall pay the claimant general damages for pain and suffering and loss of amenities in the sum of **\$63,750.00** (which is the total award for general damages of \$85,000.00 less the claimant's 25% contribution), together with interest thereon of 6% per annum from the date of service of the claim to the date of judgment.
- (4) Interest on the total award of \$68,362.50 at the rate of 6% per annum from the date of judgment to the date of payment.
- (5) Prescribed costs on the total award to the claimant pursuant to CPR 65.5 discounted by 25% to be paid by the defendant.

On the defendant's counterclaim

- (6) The claimant shall pay the defendant special damages in the sum of **\$11,500.00** (which is the total amount of special damages of \$34,000.00 discounted by the defendant's 75% contribution), together with interest thereon of 3% per annum from the date of the accident, 3rd April, 2017 to the date of judgment.
- (7) Interest on the total award of \$11,500.00 at the rate of 6% per annum from the date of judgment to the date of payment.
- (8) Prescribed costs on the total award to the defendant pursuant to CPR 65.5 discounted by 75% to be paid by the claimant.

[89] I thank Counsel for their helpful submissions and for their patience as they awaited the delivery of this judgment. The delay in its delivery is deeply regretted.

**Justice Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar