

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2014/0550

BETWEEN:

**[1] KIM MODESTE
[2] KIDDY MODESTE**

Claimants

and

MICA HAGLEY

Defendant

Before:

The Hon. Justice Raulston L.A. Glasgow

High Court Judge

Appearances:

Mr. Francis Williams for the Claimants

Mr. Ian H.H. Sandy for the Defendant

2023: September 21;
2024: March 7

JUDGMENT

[1] **GLASGOW, J.:** This matter concerns a motor vehicle collision, which the first claimant (Kim Modeste or Mr. Modeste) alleged was caused by the negligence of the defendant (Mr. Hagley). Mr. Modeste claims to have suffered damage, loss and personal injuries. Mr. Hagley denies that he was negligent, and counterclaims that the collision occurred due to Mr. Modeste's negligence.

Mr. Modeste's Statement of Case

[2] Mr. Modeste¹ states that on 3rd October 2014, at approximately 9:45 p.m., he was driving motor vehicle registration number P7342 along Cherry Hill public road, travelling towards the capital of St. George's. He alleges that Mr. Hagley overtook

¹ This claim was initially filed and issued by Mr. Kim Modeste only on 4th December, 2014. With leave of the court, on 17th March, 2016, the claim was amended to add Mr. Kiddy Modeste as the second claimant, due to his interest in the claim as the alleged joint owner of the vehicle driven by Mr. Kim Modeste.

a parked car on Mr. Hagley's side of the road and attempted to squeeze between the parked vehicle and Mr. Modeste's vehicle, which was travelling in the lane in the opposite direction, causing the collision.

[3] Mr. Modeste claims that Mr. Hagley's actions were negligent, and particularized that Mr. Hagley:

- (1) Failed to keep any or any proper look out;
- (2) Drove too fast in all the circumstances;
- (3) Overtook another vehicle on approaching a corner;
- (4) Overtook in circumstances and in conditions when it was unsafe to do so;
- (5) Failed to steer or control the car or to apply his brakes adequately or at all so as to avoid colliding with Mr. Modeste;
- (6) Failed to stop, slow down, swerve or in any other way so to manage or control the motor vehicle so as to avoid collision; and
- (7) Failed to take any or any adequate care for the safety of Mr. Modeste.

[4] Mr. Modeste claims that prior to the collision, his motor vehicle registration number P7342 was valued in the sum of \$13,000.00, but was so badly damaged, that it had to be written off. He further claims that he was trapped in the vehicle after the collision, and that he was unable to work for five weeks after the collision due to the personal injuries he sustained, which he recites as:

- (1) A laceration to the gum of the upper jaw region;
- (2) A lost upper frontal tooth;
- (3) A knock to the right knee with accompanying bruises;
- (4) A 4.0 cm stale jagged laceration to the gum located superior to the upper incisors; and
- (5) A missing upper right canine tooth, with tenderness to the general area.

[5] On the issue of special damages, Mr. Modeste claims:

- (1) \$1,000.00 for medical expenses since 3rd October, 2014 which continue to date;
- (2) \$1,200.00 for the clothing and shoes which he was wearing at the time of the collision which were destroyed in the collision;

- (3) \$13,000.00 for the total loss of the motor vehicle P7342;
- (4) \$1,500.00 for medical expenses;
- (5) \$125.00 per day for loss of use; and
- (6) Loss of insurance no claims bonus being the unexpired term of the motor vehicle insurance policy and excess.

Mr. Hagley's Statement of Case

- [6] Mr. Hagley pleads that Mr. Kiddy Modeste, Mr. Modeste's brother, was not the registered owner of motor vehicle P7342 at the time of the collision. He admits that a collision occurred while he was driving motor vehicle registration number P4358 along the public road at Cherry Hill, St. George's. He accepts that there was a parked vehicle on the side of the road on which he was travelling. His defence is that while the collision did not occur on his side of the road, when the collision occurred, half of his vehicle had already cleared the parked vehicle, which was parked around a corner.
- [7] Mr. Hagley's further defence is that he drove at a moderate rate of speed past the parked vehicle, and that Mr. Modeste's car was in a stationary position on Mr. Modeste's side of the road in the corner, parallel to the aforesaid parked vehicle. He states that he was unable to see Mr. Modeste's car immediately because he was driving around a corner. He says that he did not realize that Mr. Modeste's car was on the road because the lights on Mr. Modeste's car were off, and Mr. Modeste's car was dark in colour and not easily noticeable at night.
- [8] Mr. Hagley states that he was unable to stop, slow down, swerve or in any other way manage, or control his vehicle, or to do any other act to avoid the collision because Mr. Modeste's car was parked on the corner. Mr. Hagley contends that Mr. Modeste and the driver of the parked vehicle were negligent in stopping or parking on a corner, and that they caused the collision. Mr. Hagley particularizes Mr. Modeste's negligence as:
 - (1) Stopping on a corner without regard for the other users of the road, specifically Mr. Hagley;
 - (2) Blocking the road at night with no warning or other lights on; and
 - (3) Parallel parking at night on a corner.

[9] Mr. Hagley denies that Mr. Modeste was trapped in the vehicle after the collision, alleging that Mr. Modeste came out of his vehicle unassisted by anyone. Mr. Hagley also challenges the claimed pre – accident value of Mr. Modeste’s vehicle in the sum of \$13,000.00, stating that the vehicle was valued at best at \$7,000.00. Mr. Hagley also denies that Mr. Modeste suffered any pain, injury, loss or damage as pleaded.

[10] Mr. Hagley in his counterclaim states that Mr. Modeste’s negligence caused his vehicle to sustain extensive structural damage to the front, and to the left side at the back, rendering it a total loss and it was written off. He states that the pre – accident value of his vehicle, less the value of the vehicle’s wreckage, was \$3,200.00, and attached a copy of a survey conducted by F.L.A.T Auto Services as proof of this amount. Mr. Hagley claims special damages, which he particularizes as:

(1) Pre accident value of vehicle	\$4,000.00
Less salvage	<u>\$ 800.00</u>
Balance	\$3, 200.00
(2) Towing Fee	\$ 200.00
(3) Survey Fee	\$ 180.00
Total	<u>\$3, 580.00</u>
(4) Loss of use to be assessed.	

[11] The extent of Mr. Hagley’s counterclaim is:

- (1) Special damages in the sum of \$3,580.00;
- (2) Loss of use at \$100.00 from 3rd October, 2014 and continuing;
- (3) Interest pursuant to section 27 and 27A of the West Indies Associated States Supreme Court Act, Cap. 336 of the 2010 revised laws of Grenada at the rate of 6% per annum from 3rd October, 2014 until payment; and
- (4) Costs.

Mr. Modeste's response to Mr. Hagley's Defence & Counterclaim

[12] Mr. Kim Modeste and Mr. Kiddy Modeste filed a reply to Mr. Hagley's amended defence and counterclaim, maintaining that Mr. Kiddy Modeste was the registered owner of motor vehicle P7342. Mr. Modeste denies that half of Mr. Hagley's vehicle had passed the parked vehicle, as the collision occurred around the corner, and further denies that Mr. Hagley was driving at a moderate speed. They contend that when Mr. Modeste saw that Mr. Hagley was approaching at a dangerous speed, he manoeuvred his vehicle to the far left of the road, parallel to the parked car. Further, as there was no space for Mr. Hagley's vehicle to pass between the 2 stationary vehicles, Mr. Hagley collided with Mr. Modeste's vehicle, pushing it backward.

[13] Mr. Modeste agrees that his vehicle was dark in colour but insists that the lights of the vehicle were always on, and that if Mr. Hagley was driving at a moderate speed, he could have avoided the collision. He further insists that the pre – accident value of his vehicle was \$13,000.00, as this was the value of the vehicle's insurance.

[14] In response to the counterclaim, Mr. Modeste denies any responsibility for Mr. Hagley's losses as pleaded, and reiterates that Mr. Hagley is solely responsible for the collision and the claimants' loss, which he further particularizes as follows:

(1) Total loss of the car	\$13,000.00
(2) Medical expenses	\$ 1,500.00
(3) Unexpired term of the policy	\$ 800.00

Summary of the Evidence

Kim Modeste's evidence

[15] Mr. Modeste indicates in his witness statement that he is the joint owner of motor vehicle P7342, Mr. Kiddy Modeste is his brother, and the other co – owner of the motor vehicle. He recites that on 3rd October, 2014, he was driving motor vehicle P7342 along the Western Main Road, coming from Fontenoy. When he reached Cherry Hill, St. George's, he approached the corner near to the tyre shop.

[16] As he approached the corner, he could see a vehicle speeding towards him, and he pulled to the left, stopped, and his vehicle was partly off the road. He could go no further to the left because there was a wall on that side of the road. There was another vehicle parked on the other side of the road, and the oncoming vehicle driven by Mr. Hagley collided with both vehicles. Both vehicles were parked a short distance from each other but were not parallel. Mr. Hagley attempted to pass between both vehicles and caused serious damage to his vehicle.

[17] Mr. Modeste recites that in his earlier documents, he stated the value of the vehicle as \$13,000.00, this was an estimate; but the true value of the vehicle prior to the collision was \$8,500.00. As a result of the collision, he suffered serious physical injuries, and the vehicle was a total loss. He lost a tooth to the front of his mouth, and as recent as October 2017, he had to take time off from work due to backpain, which persists years after the collision.

[18] At trial, Mr. Modeste was cross examined at length about the alleged joint ownership of the vehicle with Mr. Kiddy Modeste. He maintained that it was their intention that they would be the joint owners, but that his brother did not fill out the necessary paperwork to reflect the joint ownership.

[19] He further stated that although he knew the owner of the parked vehicle, he had not stopped to speak to that person. Mr. Modeste further denied that the lights of his vehicle were off, as his vehicle was stationary at the time of the collision. On the issue of the change of the value of the vehicle from \$13,000.00 to \$8,000.00, Mr. Modeste explains that he had requested a valuation from his insurance company, but that the company never gave him a valuation.

Kiddy Modeste's evidence

[20] In Mr. Kiddy Modeste's succinct witness statement, he states that he is Mr. Modeste's brother, and the owner and operator of a vehicle rental business. Motor vehicle P 7342 was jointly owned by the brothers. The vehicle was insured

in his name because he has many vehicles insured with Eastern Caribbean Insurance. This was the sole reason the brothers decided to insure the vehicle in his name only – to get the benefits of a lower rate of the insurance premium. It was not an attempt to defraud anyone.

[21] At the trial, Mr. Kiddy Modeste admitted that he was employed with the Royal Grenada Police Force at the time of the collision and at the date of trial. He was cross-examined about the insurance proposal form submitted to the insurance company which recited him as the sole owner of the vehicle and whether he signed it, which he accepted that he did.

Dr. Michael H. Campbell's medical report

[22] The claimants filed an expert report prepared by Dr. Michael H. Campbell dated 1st June, 2022. Dr. Campbell recites Mr. Modeste's name and address, and his date of birth as 20th May, 1978. His report indicates that he first saw Mr. Modeste on 10th October, 2014. The report also states that Mr. Modeste indicated that he was the driver of a car which was involved in a head on collision with another vehicle on the night of 3rd October, 2014, causing him to sustain the following injuries:

- (1) Laceration to the gum of the upper jaw region;
- (2) Loss of an upper front tooth; and
- (3) A knock to the front knee with accompanying bruises.

[23] Mr. Modeste told Dr. Campbell that he was seen at the General Hospital following the collision that he was prescribed ibuprofen, analgesics and antibiotics, and a sick leave certificate was issued to him. Dr. Campbell reports that Mr. Modeste complained of the following ailments:

- (1) Severe pain in his right knee, associated with limited load bearing;
- (2) Significant pain in his mouth due to a laceration in the gum, and
- (3) A painful tooth, which caused him to experience difficulty eating.

[24] Dr. Campbell examined Mr. Modeste and reports as follows:

- (1) "Right knee – four partially healed abrasions, marked tenderness to the anterior aspect on palpation. Severe pain was elicited in the right knee

on flexion. Mr. Modeste was only able to exert very limited weight bearing on the right knee.

- (2) Mouth – there was a 4.0 cm stale, jagged laceration to the gum located superior to the upper incisors. There was a missing upper right canine tooth, the tooth just posterior to that area was extremely tender to the touch.”

[25] Dr. Campbell reports that he advised Mr. Modeste to obtain a dental evaluation for further management of his dental injuries. Dr. Campbell further advised him to continue with the antibiotics that he was already taking, in order to prevent an infection of the laceration in his mouth, as the laceration should be fully healed within another two or three weeks. An X-ray of Mr. Modeste’s right knee was done, and no fracture or dislocation was revealed. It was Dr. Campbell’s opinion that Mr. Modeste sustained a significant contusion to his right knee, resulting in ligament injuries and abrasions, and he advised Mr. Modeste to continue with ibuprofen, analgesics and to use a knee bandage.

[26] Dr. Campbell further indicates that Mr. Modeste was a chef by profession and was last seen by him on 28th October, 2014, after Mr. Modeste resumed work on 25th October, 2014. On that occasion, he states that Mr. Modeste complained to him that since he resumed work, he had been experiencing significant pain in his right knee, and that he was unable to function at his job because it involved prolonged standing. Mr. Modeste’s right knee was examined, and significant pain was elicited on the anterior aspect of palpation, and there was severe pain on flexion of the knee. He recommended two weeks sick leave and referred Mr. Modeste to Dr. Douglas Noel for further orthopaedic evaluation and management. Dr. Campbell did not attend the trial, and the medical report was tendered into evidence.

Micah Hagley’s evidence

[27] In his witness statement, Mr. Hagley deposed that he was driving his motor vehicle P4358 along the public road on Cherry Hill, St. George’s heading north, away from the town of St. George’s at or around 9:50 pm. He was driving at a speed of about 30 – 35 miles per hour. As he approached the corner after

George's Parts and Tyre Shop, he noticed a barbecue grill with a vendor on the side of the road, and a vehicle parked on the road, parallel to the barbecue grill, on his side of the road. He turned on his indicator and pulled out to bypass the barbecue grill and the parked vehicle. He had almost cleared the parked vehicle when he came around the corner, and came upon Mr. Modeste's vehicle P7243, which was parked towards the middle of the road, and parallel to the other parked vehicle.

[28] It appeared to him that Mr. Modeste and the driver of the parked vehicle had stopped in the middle of the road on a corner, having a conversation. He had no time or space to manoeuvre his vehicle so as to avoid colliding with Mr. Modeste's vehicle. Mr. Hagley says that he could not see and did not have any indication that Mr. Modeste had parallel parked his vehicle, because none of the Mr. Modeste's lights were on, and his vehicle was dark in colour.

[29] After the collision occurred, Mr. Hagley said that the driver of the parked vehicle called Mr. Modeste by name and asked him if he was okay. Mr. Modeste got out of his vehicle, and Mr. Hagley acknowledged him because he knew him. There was also a lady with Mr. Modeste who appeared to have exited Mr. Modeste's vehicle before the collision occurred. The police were called and took statements from the parties. Mr. Hagley testifies that he did not cause the collision, and that there was nothing he could have done to avoid it. This is since, he claims, Mr. Modeste's vehicle and the other vehicle were parked parallel to each other on opposite sides of the road alongside the barbecue grill. All of this, he says, took place around the corner on his side of the road.

[30] Mr. Hagley's evidence again maintains that the collision was caused entirely due to Mr. Modeste's negligence. He seeks compensation for the loss sustained as a result of the accident – \$3,580.00 in special damages and loss of use of \$100.00 a day from 3rd October, 2014 and continuing. Mr. Hagley attached a 'Certificate of Ownership' of the vehicle driven by Mr. Modeste to his witness statement, which he had requested from the Royal Grenada Police Force. He points out that the year of manufacture of Mr. Modeste's vehicle was 1972, and that the vehicle was a Toyota Sudan car. Given the year, make and model of

the vehicle, Mr. Hagley challenges Mr. Modeste's claim that the car was valued at \$13,000.00 at the time of the collision. This is since, Mr. Hagley opines, at the date of the collision, Mr. Hagley's car would have been 42 years old.

[31] At the trial, Mr. Hagley indicated that there was an error in his witness statement; where he references the second claimant, he meant Mr. Modeste. In all other respects, he confirmed the contents of his witness statement. He was cross examined on how fast he was driving, which he confirmed to be 35 – 40 miles per hour, due to his periodic glances at the speedometer. He confirmed that he was not familiar with the area where the collision occurred, especially at night, and denied that he was speeding or driving in an aggressive manner.

[32] Mr. Hagley further replied in cross examination that the corner started from the tyre shop, and the barbecue stand was after the tyre shop. He saw the vehicle parked by the barbecue stand, and as there was no oncoming light showing that a vehicle was coming, he indicated, and pulled to his right to overtake the parked vehicle. As he accelerated, he then noticed that there was a vehicle parked opposite to the parked vehicle by the barbecue stand.

[33] Mr. Hagley stated that he did not blow his horn, and as he realized that the collision was about to occur, he held on to his steering wheel as best as he could, because there was nothing that he could do to prevent the collision. He further stated that neither vehicle had their lights on, there was no space to complete the overtaking manoeuvre between either of the vehicles, and his vehicle swayed and hit both vehicles. He did not know that the road was blocked until he started the manoeuvre to overtake the parked vehicle.

Discussion & Findings

Preliminary Points

[34] This court first wishes to remind counsel about the importance of CPR Part 39, especially on the preparation of trial bundles, and the documents to be included therein. The documents to be provided in the trial bundle are set down in rule 39.1 (5) and (6) of the CPR. Deficiencies in trial bundles waste judicial time, as the court must then revert to its file to locate documents relied on by the

respective parties during the trial for consideration. More importantly, the trial bundle must always contain the documents filed by the opposing party.

[35] Secondly, the court wishes to address the point raised by Mr. Hagley during the pendency of this matter and at trial, on the issue of the ownership and insurance of motor vehicle P7243, which was involved in the collision. Mr. Hagley argues that Mr. Kim Modeste & Mr. Kiddy Modeste were defrauding their insurance company, as Mr. Modeste represented to the insurance company that his brother was the owner of the vehicle in order to obtain a lower premium on the insurance policy. The certificate of ownership, which this court has had sight of, only shows Mr. Modeste as the owner.

[36] I do not see the relevance of this issue to the questions raised on the cases of both parties. This court has been asked to determine whether either or both parties are to be held accountable for the collision that occurred on 4th October 2014. In that regard, the court is asked to examine that question based on the principles of the law on negligence. Whether the brothers acted illegally with respect to the contract that they entered into with the insurance company is not a matter for deliberation on this case. That may be a matter which the insurance company may wish to pursue against one or both of their insured².

Liability

[37] In relation to the issue of liability, this court conducted a site visit to Cherry Hill, St. George's, the locus of the collision, with the parties and their counsel. Given that I did not have the benefit of the police report in relation to the collision, either to assess the measurements taken, or to have the benefit of noting any contemporaneous statements made by the parties to the police after the collision, I am constrained to base my findings on the evidence put forth by the parties and my observations at the site of the collision.

[38] My assessment of the material placed before me leads me to the view that Mr. Modeste appears to be forthright in detailing how the collision occurred. Mr. Modeste states in his witness statement, and reiterated at trial, that he saw Mr.

² See section 4A and 13(2) of the Motor Vehicles Insurance (Third Party Risks) Act Cap. 202 of the revised laws of Grenada.

Hagley speeding towards him, and this caused him to pull his vehicle to the left, off of the road. My visit to the locus suggests that it is quite possible that Mr. Modeste saw Mr. Hagley's vehicle or at best, the lights from Mr. Hagley's vehicle coming towards him as described. Mr. Modeste's vehicle was approaching a curve or corner of the road sloping downhill. The barbecue stand and the other vehicle were on the other opposite side of the road on which he was driving. When he saw Mr. Hagley's car approaching at a fast speed, it was quite prudent of him to pull to the left side of the road.

[39] Mr. Hagley, on the other hand, was climbing the hill and coming around a corner. He was obliged to approach the corner at a moderate speed and with due care and attention. This is primarily because his vision as to what was around the corner would have been totally or partially inhibited. My view is that even if Mr. Modeste and the other vehicle were parked parallel to each other having a chat, Mr. Hagley would have been able, not only to observe this activity, but would have avoided hitting one or both of their vehicles if he had proceeded around the corner with sufficient care and attention and at a moderate rate of speed.

[40] Further, Mr. Hagley claims that he collided with one or both vehicles while he was attempting to overtake the parked vehicle. Mr. Hagley had a duty to ensure that he could safely overtake the parked vehicle and return to his side of the road **before** he conducted that overtake manoeuvre. The law is clear on the duty of a road user who is attempting to overtake another vehicle. In **McCall v Ogiste**³, Phillips JA described the test as:

"The position seems clearly to me that the appellant in attempting to overtake a stationary vehicle on her proper side of the road might have been guilty of an error of judgment...What this court has to consider is whether objectively, it could be said that was the act of a prudent driver. **The law places the onus on the driver of an overtaking vehicle to make sure that the movement is safely conducted and completed: one must make sure that one can pass a vehicle and get back at**

³ (1965) 9 WIR 291.

once to the proper side before the approach of oncoming vehicles.”⁴ (Bold emphasis mine)

In **Cheryl Edwards (Administratrix of the Estate of Janique Lewis) v Etnel Mills⁵**, Rawlins J stated:

“Drivers of motor vehicles are under a duty to exercise due care on the road. They are expected ... 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 on the circumstances including the weather, visibility, the number of vehicles on the road, the presence of pedestrians and the state of the road.”

[41] Taking Mr. Hagley’s evidence at its highest, I find that his attempt to overtake the parked vehicle was negligent, in both his assessment and completion of the manoeuvre. Based on Mr. Hagley’s description of the location of both vehicles on the road and the visit to the locus, I find that it would have been impossible for Mr. Hagley to properly complete the overtaking manoeuvre, pass through both vehicles, and get back on to his side of the road safely. Mr. Modeste, for instance, would have had to reverse his vehicle to provide sufficient space for Mr. Hagley to pass through, especially if Mr. Hagley’s evidence is to be believed, that the vehicles were parked parallel to each other.

[42] I also took note of Mr. Hagley’s evidence that he was driving at 35 – 40 miles per hour, and that he accelerated in order to overtake. As stated by Henry J in the case of **Vincent Frederick v Francis Marks⁶**,

⁴ Ibid at 293.

⁵ ANUHCv1998/0168.

⁶ SVGHCv2010/0474.

“It seems to me that a driver approaching a sharp bend must of necessity slow down and proceed cautiously to ensure that it is not surprised by any obstruction or person in the road. If the bend is not particularly deep, a driver will be expected to have a better range of vision much sooner and for a greater distance and can therefore proceed at a slightly quicker pace.”⁷

[43] As I have stated above, had Mr. Hagley slowed down or stopped to observe the corner adequately, and proceeded cautiously, he would have noticed Mr. Modeste’s vehicle, and thereafter realized that he could not complete the overtaking manoeuvre without the parked vehicle moving, or Mr. Modeste reversing to allow him adequate space to pass through. Further, Mr. Hagley stated that he did not blow his horn before attempting to overtake, and that he did not attempt to employ any corrective measures when he realized that the collision was about to take place, such as pressing his brakes, or swerving to avoid the collision. These are not the actions of a prudent driver. Based on the evidence, and the visit to the locus of the collision, I conclude that Mr. Hagley was negligent and solely responsible for the collision which occurred on 3rd October, 2014. He must compensate Mr. Modeste for his loss, damages and personal injuries.

Relief

Kim Modeste’s claim for damages

[44] The parties were invited to file written submissions and authorities at the conclusion of the trial. The claimants filed submissions on 31st October, 2023 and Mr. Hagley filed submissions on 9th January, 2024. Mr. Hagley correctly pointed out in submissions that the claimants have put forward no documentary evidence to support their claim for special damages, as no bills or invoices were submitted to support the medical expenses and loss of clothing as set out in the claimants’ request for relief. In addition, the claimants produced no valuation with respect to the claimed damage to and/or loss of the vehicle driven by Mr. Modeste. Mr. Hagley did not provide the court with submissions on the

⁷ Ibid at 56.

assessment of damages, and instead, he asked the court to prefer his evidence and to grant judgment in his favour on the counterclaim.

[45] It is by now trite law that special damages must be sufficiently pleaded and proven⁸. In **Greer v Alstons Engineering Sales and Services Limited**⁹, Sir Andrew Leggatt stated that “when such evidence is not provided, however, it is open to the trial judge to give consideration to an award of nominal damages.”

Medical expenses

[46] With respect to the claimed medical expenses, the medical report provided by Dr. Campbell, details two visits made by Mr. Modeste in October, 2014. The report references Mr. Modeste’s reported injuries, treatment, and Dr. Campbell’s recommendations. It is the only evidence presented on this issue. I am satisfied that Mr. Modeste would have had to incur the costs of his visits to the doctor and the costs of the medications mentioned in Dr. Campbell’s report. In the absence of evidence as to how much was paid, I will award a nominal sum of \$1,500.00 as special damages for medical expenses.

Loss of use

[47] Mr. Modeste would, in all likelihood, have incurred some loss as a result of the loss of the use of his vehicle. Loss of use, again, must be both pleaded and proven. In **Tropical Builders v Gloria Thomas**¹⁰, the court in awarding loss of use at the sum of \$150.00 per day held that:

“It is the law that the owner of a motor vehicle that is damaged...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.”

⁸ Ratcliff v Evans (1892) 2 QB 24.

⁹ [2003] UKPC 46.

¹⁰ ANUHCv2004/0228 at 31.

[48] Mr. Modeste has not stated a period for the loss of use for the court's consideration. Indeed, he says that the vehicle was written off, but no evidence has been provided of that fact. It is clear though that he would have incurred loss for some period while he sought to obtain a new vehicle or made other arrangements to commute. I will award Mr. Modeste the nominal sum of \$750.00, representing a base sum of \$150.00 per day for the period of five days.

Loss of clothing, loss of the vehicle and loss of insurance “no claim” bonus

[49] I will not make any other award for special damages for loss of clothing and shoes, loss of the vehicle, and loss of Mr. Modeste's “no claim bonus” on his motor vehicle insurance. There is simply no documentary or other evidence to support the allegations of loss of the amounts claimed. It has not been proven, for instance, that Mr. Modeste's clothing was lost or severely damaged due to the collision, and the value of the articles of clothing were not set out.

[50] In relation to the loss of the vehicle, the claimants have on the one hand asserted different values of the vehicle in question. While I accept the evidence that the vehicle may have been damaged, there is no evidence that it was totally destroyed or written off. In the absence of evidence of the extent of the damage to the vehicle and of the value of the vehicle, there is no basis on which I can award even a nominal sum for this loss. The same view holds for the “no claim bonus” that Mr. Modeste seeks to recover.

General damages

[51] On the issue of general damages, Mr. Modeste claims the sum of \$215,000.00 for personal injuries. At the time of the collision, Mr. Modeste was 35 years old. He recounts in submissions that on the day in question, he was employed as a chef at Coyaba Hotel at Grand Anse, St. George's. Reliance was placed on the case of **Mc’Namara and Stephen v Seymour The Lawyer – Volume 8 No 2 of 2011 at pg 58** for an award of \$35,000.00 to \$40,000.00 for the damage to Mr. Modeste's tooth and laceration to the gum. Mr. Modeste claims that he experienced difficulty when eating. He claims to have also become quite discomfited when people looked at him in a strange way when he spoke, opened his mouth or smiled, causing him to seldom speak or smile. He presents the

sum of \$10,000.00 as the replacement costs of his upper front tooth and for other dental work performed.

[52] With respect to the injury to his knee, Mr. Modeste relies on **Lawrence v Vernon The Lawyer – Volume 8 No 2 of 2011 at pg 68** for an award of \$140,000.00. He submits that his job as a chef at the time of the collision required prolonged standing. He explains that when he returned to work after the collision, he was unable to function at his job, and as a result of the injuries, he lost the job. In his submissions for the first time, he made claims for loss of future earnings and loss of amenities. Loss of amenities were underpinned by the assertion that he played cricket in his village, that he was an avid cricketer and would hunt in his spare time. Mr. Modeste also submits that he would exercise before going to work, and after work, he would go to the gym. These activities he submitted he could no longer do. On this basis, he seeks relief in the sum of \$30,000.00 for loss of amenities.

[53] The various claims made by Mr. Modeste in his submissions for loss of future earnings, loss of his job, loss of amenities, or the cost of future medical treatment will not be allowed. These matters were not pleaded in his statement of case or fleshed out in his witness statement. No evidence was led at trial on these matters. They were raised for the first time in his closing submissions. As such, Mr. Hagley did not have the opportunity to answer any pleadings on these matters, or to test these matters on cross examination. As stated by Ward JA in **National Lotteries Authority v Jerome De Roche**¹¹ stated:

“In short, therefore, the claimant must plead the essential facts that constitute its case, and those facts must be sufficient to establish a cause of action and to enable the other side to know the case it has to meet in sufficient detail. CPR 8.7A prohibits reliance on allegations or facts not pleaded unless the judge gives permission, or the parties agree...¹²”

¹¹ GDAHCVAP2021/0025.

¹² Ibid at 38 – 39.

[54] Further, I have considerable difficulty accepting Mr. Modeste's testimony that he was trapped in his car after the collision, and that as a result he experienced severe back pain which persisted for several years after the collision. Mr. Modeste's alleged back injury is nowhere addressed in the medical evidence presented by his doctor, Dr. Campbell. One would surmise that an allusion to such a serious injury would have been supported by some evidence, particularly medical evidence. I will consider an award for general damages with respect to the injuries addressed in the medical testimony provided by Dr. Campbell, specifically, the knee injury and the dental injuries.

[55] It is established law as set out in the well-known case of **Cornilliac v St. Louis**¹³ that the main factors to be taken into account when awarding damages for personal injury are (i) the nature and extent of the injuries sustained, (ii) the nature and gravity of the resulting physical disability; (iii) the pain and suffering endured; (iv) the loss of amenities; and (v) the extent to which pecuniary prospects are affected.

[56] Dr. Campbell's medical report dated 1st June, 2022 recited that he examined Mr. Modeste on two occasions, on 10th October, 2014, 7 days after the collision, and again on 28th October, 2014 when he recommended that Mr. Modeste takes two weeks of sick leave from work. I accept this medical evidence that indicates that Mr. Modeste suffered injuries and was experiencing significant pain in his right knee as documented. Besides these findings by the doctor, however, there is no evidence, outside of Mr. Modeste's stating so, that the pain or injuries continued, for how long they continued or that they are continuing.

[57] In awarding general damages, the court is tasked with making an award in accordance with the evidence and comparable cases. As stated in **Wells v Wells**¹⁴,

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

¹³ (1965) 7 WIR 491.

¹⁴ [1998] 3 ALL ER 481

with similar awards in comparable cases as represents the Court's basic estimate of the plaintiff's damage."

Award for knee injury

[58] With respect to the knee injury, in the case of **Lawrence v Vernon**¹⁵, relied on by Mr. Modeste, the award for a severely injured knee was \$9,000.00, which was adjusted to December, 2010 to \$192,055.00. A more comparable case is that of **Glenda Williams v Francis Wilson et al**¹⁶, where the claimant was awarded \$18,000.00 in general damages for her knee injury when she was injured after a motor vehicle collided with her. She complained of pain in the knee which dragged, buckled and caused near falls, and she experienced pain when climbing stairs and walking short distances. Her medical assessments indicated post traumatic chondromalacia to the left knee and subsequently, osteoarthritis of the left knee. The court further noted that her osteoarthritis was considered mild, with no evidence that it would worsen significantly or require constant physiotherapy or knee replacement surgery.

[59] In another comparable case, **David Robin and Ors v Ulysses Auguiste and Ors**¹⁷, the 2nd defendant was involved in a vehicular collision and sustained "a 15-centimeter diameter swelling on the right leg just below the knee, which was very painful and associated with an area of bruising", along with an injury to the neck. By the time the 2nd Defendant was examined by the doctor some 15 months after the collision, her neck was healed but mildly painful, and she was still experiencing some mild pain with skin discoloration on the right leg. The 2nd Defendant was awarded the sum of EC\$10,000.00 for pain and suffering and loss of amenities. I find that based on Mr. Modeste's evidence and in light of awards for similar injuries, fair compensation for his knee injury would be in the sum of \$15,000.00 for pain and suffering.

Award for dental injuries

¹⁵ HCA 1170 of 1973.

¹⁶ SLUHCv2018/0535.

¹⁷ DOMHCv2003/0141.

[60] With respect to the dental injuries, I find the case relied on by Mr. Modeste to be helpful, but Mr. Modeste's injuries were less extensive than those experienced by the litigant in **McNamara and Stephen v Seymour**¹⁸, where there was serious damage to the teeth, and an award for general damages was made of \$2,500.00, updated in 2010 to \$52,179.00. A more comparable case is the case of **Barrow v Yard**¹⁹ where the plaintiff was a fisherman who was struck on his mouth and over his left eye by 2 stones. He sustained a 4cm laceration to the left temporal area, his upper incisor tooth was chipped, and his mouth injured. The laceration was cleaned and sutured, and the plaintiff discharged on analgesics and antibiotics. He was later seen by a dentist and 6 teeth were extracted over a period of about 2 weeks. At the time of the assessment, arrangements had been made for dentures to be fitted on the plaintiff. General damages for pain and suffering were assessed at \$4,500. Based on Mr. Modeste's evidence of injury to his mouth and tooth, a fair award is the sum of EC\$ \$5,000.00.

Conclusion

[61] For the aforementioned reasons, the claimants have succeeded on their claim, and judgment is entered in their favour. The defendant's counterclaim is dismissed in its entirety. It is ordered as follows:

- (1) Mr. Modeste is awarded the sum of \$1,500.00 as special damages for medical expenses;
- (2) Mr. Modeste is awarded the sum of \$750.00 as special damages for loss of use of his vehicle registration number P7342;
- (3) Mr. Modeste is awarded the sum of \$20,000.00 as general damages for pain and suffering;

¹⁸ HCA 2036 of 1973.

¹⁹ BB 1988 HC 58.

- (4) Interest on the special damages of \$2,250.00 awarded to Mr. Modeste at the rate of 3% per annum from the date of the collision on 3rd October, 2014 to the date of trial in the sum of \$602.00;
- (5) Interest on the general damages of \$20,000.00 awarded to Mr. Modeste at the rate of 6% per annum from the date of the date of service of the writ to the date of trial in the sum of \$10,600.00;
- (6) Costs are awarded to the Claimants in the sum of \$1,500.00;
- (7) Interest on the judgment sum in the total of \$34,952.00 from the date of judgement to the payment at the rate of 6% per annum until payment.

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar