

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

SLUHCV2020/0165

BETWEEN:

ELEANOR FRANCIS
Representative of the Estate of Norman Francis

Claimant

and

URANUS JOHN

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Sahleem Charles for the Claimant

Mr. Dexter Theodore KC with Ms. Sueanna Frederick for the Defendant

2021: October 20;
November 22,23; (written submissions)
2023: April 3.

JUDGMENT

- [1] **CENAC-PHULGENCE J:** The claimant, Eleanor Marline Francis ("Mrs. Francis"), appointed as representative of the estate of Norman Francis, the Deceased for the purposes of these proceedings¹ claims against Mr. Uranus John ("Mr. John") for damages consequent upon losses sustained as a result of a motor vehicular accident which occurred on 22nd June 2017 at about 5:30 p.m. along the Paix Bouche Road in the quarter of Babonneau. Mrs. Francis alleges that the accident was caused by the negligence of Mr. John.

¹ Order dated 13th May 2000.

- [2] At the material time, Mrs. Francis was the driver of a Land Rover Evoque/SUV, motor vehicle registration number PC5128 ("Land Rover") owned by the deceased, Norman Francis² as his servant or agent whilst Mr. John was the owner and driver of a Nissan Frontier/Pickup motor truck registration number PG7850 ("the Nissan Pickup").
- [3] It is not in dispute that on 22nd June 2017 at about 5:30 p.m. there was a collision between the Land Rover driven by Mrs. Francis and the Nissan Pickup owned and driven by Mr. John and that Mrs. Francis was travelling in a northerly direction while Mr. John was travelling in a southerly direction.
- [4] The particulars of negligence as alleged in the statement of claim are that Mr. John:
- (a) failed to heed the presence of the Land Rover on the said road at the time;
 - (b) drove at the speed which was excessive having regard to the conditions prevailing on the road at the time;
 - (c) failed to stop, slow down, swerve or in any other way control the vehicle so as to avoid the collision;
 - (d) failed to have any sufficient regard for the Land Rover reasonably on the road at the time;
 - (e) failed to take steps to avoid the collision;
 - (f) failed to keep a proper lookout;
 - (g) failed to keep to his left and proper side of the road.
- [5] Mrs. Francis avers that Mr. John was convicted of driving without due care and attention on 8th April 2019 and relies on the conviction as proof of negligence.
- [6] Mr. John denies that the collision was caused as alleged by Mrs. Francis. He admits to being convicted of driving without due care and attention but denies that he was negligent. Instead, he avers that the collision was caused either wholly or in part by the negligence of Mrs. Francis and alleges the following particulars of negligence against her:

² The Deceased passed on 7th February 2019.

- (a) driving in the wrong side of the road;
- (b) failing to steer or control the Land Rover as to avoid the collision;
- (c) failing to keep any or any proper lookout and/or to observe or heed the presence or approach of the Nissan Pickup;
- (d) suddenly and without warning crossing into the path of the defendant

[7] Mr. John's case is that Mrs. Francis suddenly moved across to his right and proper side of the road to avoid a hindrance on her side of the road when it was not safe to do so and this resulted in the collision the impact of which caused Mr. John's Nissan Pickup to move to Mrs. Francis' side of the road.

[8] Mrs. Francis denies that she crossed into Mr. John's path when it was not safe to do so and maintains that it is Mr. John who failed to keep to his left and proper side of the road veering into her path.

Issues:

- [9] The issues to be determined are:
- (a) Whether the defendant owed a duty of care to the claimant?
 - (b) Whether the accident was caused by the negligence of the defendant Mr. John?
 - (c) Was the claimant contributorily negligent?
 - (d) If so, what damages is the claimant entitled to?

Discussion and Analysis

[10] Article 985 of the **Civil Code**³ sets out the basis for liability in negligence. It states that:

"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."

[11] In **Northrock v Jardine et al**⁴ Sir Vincent Floissac said in relation to article 985 that the onus of proving as a pre-condition of the defendant's delictual liability that damage was caused by the defendant's fault lies with the claimant. Article

³ Cap. 4:01, Revised Laws of Saint Lucia.

⁴ (1992) 44 WIR 160.

985 falls to be interpreted by reference to the English law of tort. Therefore, the claimant must prove (a) that the defendant owed a duty of care to the claimant; (b) that the defendant breached that duty of care; (c) that the damages sustained by the claimant was caused by that breach.

Issue (a)-Whether the Defendant owed a Duty of Care to the Claimant?

[12] There is no dispute and it is trite law that the driver of a vehicle owes a duty of care to other drivers and road users to drive with the degree of skill and care to be expected of a competent and experienced driver. It is clear that both Mrs. Francis and Mr. John owed each other a duty of care.

[13] It is well established that the duty and the standard of care applicable to drivers of vehicles on or near a highway is to drive with the skill and care of a reasonably competent and experienced driver.⁵ 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 in the following terms:

"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."⁸

Issue (b)-Whether the accident was caused by the negligence of the defendant Mr. John?

Evidence

Mrs. Eleanor Francis

[14] Mrs. Francis' evidence is that on 22nd June 2017, she was driving the Land Rover along the Paix Bouche road on her left and proper side of the road in a northerly direction. She says there was no obstruction vehicular or otherwise

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

⁶ Civil Claim No. 8 of 2005 (Saint Vincent and the Grenadines, delivered 3rd July 2006).

⁷ Claim No. ANUHCv1998/0168 (delivered 28th November 2002).

⁸ May v Stevenson, at paragraph 17.

on her left side of the road where she drove. Mr. John was driving in the opposite direction and failed to keep to his left and proper side of the road, veered right into her path and collided with the Land Rover.

- [15] At the time of the collision Mrs. Francis was driving towards the direction of Paix Bouche and Mr. John was heading towards Babonneau. She says she saw Mr. John's pickup which was heading towards her swaying uncontrollably in the road and in an effort to avoid Mr. John's vehicle from colliding with hers, she pulled more to the left and came to a complete stop and pulled up her hand brakes.
- [16] She says after she stopped the car she was so frightened that she attempted to jump into the passenger seat of the vehicle because Mr. John's Pickup continued its uncontrollable path towards the Land Rover. The Pickup collided with the Land Rover and Mrs. Francis says she heard a loud noise as Mr. John's Pickup made impact with the Land Rover.
- [17] In cross-examination Mrs. Francis remained resolute that there was no truck, white or any other colour parked on her side of the road which she was trying to pass. She was adamant when asked why she had not brought either her daughter or her daughter's friend who was in the vehicle that day to corroborate her story that there was no parked truck, that she did not need to given that she was speaking the truth and there was no parked truck.
- [18] Mrs. Francis admits that she did see Mr. John's vehicle approaching her from about 150 yards away which would be roughly about 450 feet. Mrs. Francis' cross-examination suggests that the right turn to drop off her daughter's friend was close and if indeed there was a truck parked in front of her, why would she simply not wait behind the truck until the road was clear.

Mr. Uranus John (also known as "Ralph")

- [19] Mr. John's evidence is that at the time of the accident he lived at Paix Bouche, Babonneau. He is a builder. On 22nd June 2017, Mr. John left Gros Islet and decided to travel to Balata to check one of his workers and travelled through the back road and then through Paix Bouche. He says there was a white truck

parked on his right side of the road just before the gap on his right-hand side facing Monier. He says he was driving on his left side of the road and it was clear. As he continued to drive, a brown jeep (the Land Rover) suddenly came from behind the white truck and tried to pass the truck causing the Land Rover to come into his side of the road.

[20] Mr. John says he was too close at the time this happened and realised that he would not be able to stop in time and that the Land Rover would not be able to pass the white truck in time to get back on its side of the road so he tried to get away.

[21] He says he swerved to the left to try to give the driver of the Land Rover enough space to squeeze through but when he swung to the left his left tyre hit a low wall on the left side of the road causing the left tyre of the Pickup to burst. When the tyre burst, Mr. John says he ended up drifting to the right and his right tyre hit the Land Rover, and the right wheel on the Nissan Pickup came off completely.

[22] At the time the vehicles collided, Mr. John says both vehicles were right next to the white truck. The impact of the two vehicles hitting each other caused the Land Rover to be pushed back behind the white truck and get pushed back onto the left side of the road.

[23] After the impact because of the burst tyre and the fact that he lost another tyre, Mr. John says he could not control the vehicle and it continued to roll down the road which is slightly sloping and eventually stopped on the same side of the road as the Land Rover. The white truck he says moved not long after the accident. After the Pickup stopped he walked to the Land Rover with Fish who was his passenger. Fish told the lady driving the Land Rover that she had caused the accident.

[23] Mr. John says they called the police and measurements were taken from both Mrs. Francis and him.

Mr. Eustace Paul also called Fish (“Mr. Paul”)

- [24] Mr. Paul was in the passenger seat on Mr. John’s Pickup when the accident happened. His evidence is he saw the lady in the Land Rover going up the road and there was a truck parked her side of the road. He says she was behind the truck when he saw her and then she left her side and came onto their side of the road to pass the truck. When she did that she was too close to them.
- [25] Mr. Paul says Mr. John tried to get away and pulled to the side but the Pickup hit a little wall on the side of the road and then the Pickup and the Land Rover collided with each other. He says after the accident he spoke to the lady who was driving the Land Rover and told her she was wrong. He too says that as soon as the accident happened the truck moved.

Analysis of evidence

- [26] Counsel for the claimant says that Mrs. Francis’ evidence establishes that there was no truck parked on the right side of the road at the time of the accident and that Mr. John has failed to substantiate the fact that such a truck existed at that time. Mrs. Francis’ evidence that she saw Mr. John’s vehicle from about 150 yards away supports her evidence that she was able to see the Nissan Pickup from afar because there was no truck obstructing her view of the road.
- [27] Mr. John’s evidence was at times very unclear. However, from my review, his evidence is that when he saw Mrs. Francis come out from behind the truck he was too close and realised he would not have been able to stop in time for Mrs. Francis to make it past the truck, and so he tried to ‘get away’ by swerving to his left which is when his left tyre burst, he drifted to the right which is when he collided with Mrs. Francis and his right tyre blew causing him to lose control of the Nissan Pickup. In his cross-examination, when asked whether he lost control of the Nissan Pickup when he burst his tyre on the wall, he initially said no and then subsequently agreed with Counsel, Mr. Charles that if the tyre was busted it is likely that the vehicle was out of control.
- [28] I do recognise that Mr. John seemed to be challenged in expressing himself. However, his responses to the question of whether he lost control of the Nissan

Pickup after the tyre hit the wall and burst were inconsistent. At one point he said he did not lose control at that point and at another point he said he did lose control after the tyre burst. What is clear is that he did lose control at some point, his Nissan Pickup drifted to the right and ended up colliding with the Land Rover.

[29] What is clear is that when Mr. John hit his left tyre on the wall on the left side, it was because he was as he says, trying to 'get away' from Mrs. Francis' Land Rover because he could not stop. He admits that he saw her coming but instead of coming to a stop, Mr. John continues driving, pulling to the left hoping that as he says Mrs. Francis can 'squeeze' through.

[30] In fact, in cross-examination, Mr. John when asked why he did not stop if he said he saw the Land Rover coming, said it was because he thought that Mrs. Francis would have stopped at the back of the truck. Mr. John decided that he would keep driving because Mrs. Francis should have stopped. If as he said he saw her coming then it was incumbent on him as a prudent driver to stop and proceed cautiously not try to make space for the Land Rover to squeeze through.

[31] Another aspect of the evidence is the presence of this truck on the right side of the road, the same side that Mrs. Francis was driving on. Mrs. Francis has been consistent in her evidence that there was no truck parked on the road and that if that was the case she would have had to have stopped behind it because she would be making a right turn close to where the truck was supposed to be. Her evidence is that she saw Mr. John's vehicle from a good distance and she would have been obliged to stop until the road was clear.

[32] The truck is an integral part of Mr. John's evidence. Yet, in the police report there is no mention of there being a truck parked on the right side of the road facing the direction of Babonneau. No mention of the presence of a truck is made in the statement which Mr. John gave to the insurance company, neither is the truck identified as the obstruction mentioned in Mr. John's defence. I find this quite curious especially as at every opportunity in answer to questions, Mr.

John profited the opportunity to give the whole story again and again with the presence of the truck featuring. At first Mr. John said in his witness statement that the truck was white whilst Mr. Paul in his witness statement said it was blue. When Mr. John gave his evidence he sought to amend the colour of the truck to blue instead of white. Mr. Paul could not recall any details about the truck save that it was blue and had two doors. Mr. Dexter Theodore KC ("Mr. Theodore KC"), Counsel for Mr. John submits that an explanation for the truck not being mentioned in the police report is that after the collision the truck drove away. I do not find that this is a good explanation as that truck is integral to the defendant's version of events.

[33] It is also quite striking that Mr. John's evidence of his Nissan Pickup hitting the wall at the side of the road does not feature at all in his explanation of how the accident occurred but is critical to why he says he ended up hitting the Range Rover. Mr. John in cross-examination said he could not recall what he told the insurance company but it is clear that this evidence is critical to how the accident occurred but he omitted it just as he omitted to advise of the presence of the truck which is why, according to him, Mrs. Francis veered into his lane in the first place.

[34] In cross examination on the question of where the Range Rover was in relation to the truck when the collision took place, Mr. John at first said that the collision took place at about the middle of the truck and then he said Mrs. Francis was just moving from the back of the truck and was not in between the truck and the Nissan Pickup. However, at paragraph 18 of his witness statement, Mr. John says that when his Pickup hit the Range Rover, the vehicles were side by side. When he was questioned about this inconsistency, he said he could not recall that and insisted that Mrs. Francis was coming from the back of the truck. Mr. Paul (Fish) the other witness for the defendant could not say whether when the accident occurred the Range Rover and Nissan Pickup were next to the truck.

[35] Whichever version one accepts there is one problem. It is inconceivable that the accident would have happened in the manner described by Mr. John and Mr. Paul and the truck not be impacted at all. In fact, the left side of the Rage

Rover would have suffered damage because it would have impacted the truck parked at the side of the road, but there was no damage to the left side of the Range Rover. It is even more incredulous that the driver of the truck drove off as soon as the accident occurred but no mention of the truck was ever made to the police or the insurer. Further, had Mrs. Francis been coming out from the back of the truck as Mr. John said at one point, the collision would more than likely have been to the front of the vehicles.

[36] Mr. Paul in cross-examination when asked whether the accident happened on the front of the vehicles, said that the front of Mrs. Francis' vehicle hit the tyre of the Nissan Pickup and when it hit the tyre the vehicle drifted and it turned across the road. Mr. John's account was that the vehicles did not collide to the front. No where in Mr. Paul's evidence does he reference the Nissan Pickup hitting the wall prior to the vehicles colliding which was a major feature of Mr. John's evidence. Although Mr. John stated that after the Nissan Pickup collided with the Range Rover, the Range Rover was pushed back behind the truck, Mr. Paul's evidence does not speak to this at all. This too would have been a critical part of how the accident happened and Mr. Paul was in the passenger seat from where he said he saw what happened. Yet he said in cross examination that the Range Rover never moved.

[37] When one examines the measurements taken by the police and recorded in the Traffic Accident Report dated 15th August 2017, it shows that the brake impression of the Nissan Pickup was 25.9 metres (84.97 ft) and the length of the gorge marks caused by the Nissan Pickup was 14 metres (45.93 ft.). Mr. John agreed that these measurements would show the speed at which one is driving and their attempts to stop but disagreed that they showed that he was driving too fast in the circumstances. Mr. John later in the cross-examination when it was put to him that he did not stop because he could not stop and he had too much speed, responded that he could have stopped but he was not expecting Mrs. Francis to come from the back of the truck onto his side of the road. When I examine the measurements taken and the points of impact it is clear to me that the collision took place on the left side of the road facing north towards Paix Bouche.

- [38] Another aspect of the evidence which is quite important is Mr. John's version where he says that after the left tyre burst and he drifted to the right and hit the Range Rover, then his left tyre came off and the Nissan Pickup pushed the Range Rover back behind the truck. If indeed this happened which I do not accept, it would have to be that Mr. John was driving the Nissan Pickup at such high speed to be able to push the Range Rover backwards.
- [39] Based on the inconsistencies identified in the defendant's evidence, I am inclined not to accept Mr. John's version of the facts. I do not believe Mr. John or Mr. Paul when they say there was a truck parked on the right side of the road. That I believe was simply a way to lay the blame for the accident at Mrs. Francis' feet. In addition, Mr. Paul was very aggressive in his demeanour and at one point referred to Mrs. Francis as a 'liar' for which he was admonished but repeated it nonetheless.
- [40] The evidence points to Mr. John driving at high speed, realising that he would hit the Range Rover and attempting to avoid it by swerving to the left but hitting the wall causing the left tyre to burst and him to lose control, veer to the right and hit the Range Rover losing the right tyre which sent the Nissan Pickup further out of control. If the Range Rover had hit the Nissan Pickup the accident would have occurred on Mr. John's side of the road but Mr. John's evidence itself suggests that the collision did not take place on his side of the road.
- [41] Based on the above analysis and taking all the evidence into account it is clear that Mr. John breached his duty of care to Mrs. Francis. I find on balance the collision was caused solely by the negligence of Mr. John. The issue of contributory negligence raised by Mr. John on his defence simply does not arise in this case. Mr. John has failed to satisfy the Court that Mrs. Francis' driving was unreasonable and that she was the cause of the accident. Mr. John admits to making a decision to pull to his left to allow Mrs. Francis to pass instead of him stopping which resulted in his tyre hitting the low wall and bursting, and the Nissan Pickup then drifting to the right and hitting the Range Rover. Nothing in his account points to Mrs. Francis being the cause or partially the cause of this accident.

[42] Whilst Mr. Theodore KC has submitted that this accident was inevitable and therefore the defendant ought not be found negligent, it was the decision taken by Mr. John to not stop but to try to make space for Mrs. Francis to pass as he claims that led to the accident occurring in the manner that it did. If he had stopped as a prudent driver should have done, the accident would not have happened but he said he could not stop because he was too close.

Evidence of conviction

[43] Mr. Charles, Counsel for Mrs. Francis submits that the evidence of a conviction is prima facie proof of the conduct constituting the offence which was proven and places the onus on the defendant who disputes this to prove that notwithstanding the conviction, he was guilty of the offence nor was he negligent. Mr. Charles refers to the Kittitian appeal case of **Keithlyn Bergan v Sheryl Evans**⁹ in support.

[44] On the other hand, Mr. Dexter Theodore KC ("Mr. Theodore KC"), Counsel for Mr. John submits relying on section 78 of the **Evidence Act** that the evidence of Mr. John's conviction is inadmissible, and no weight should be attached to it.

[45] Sections 78 and 79 of the **Evidence Act** provide as follows:

78. EXCLUSION OF EVIDENCE OF JUDGMENTS AND CONVICTIONS

(1) Evidence of the decision in proceedings is not admissible to prove the existence of a fact that was in issue in the proceedings.

(2) Where evidence of a decision referred to in subsection (1) is relevant, otherwise than as mentioned in that subsection, it may not be used for the purpose mentioned in that subsection.

79. EXCEPTIONS

(1) Section 78(1) does not prevent the admission or use of evidence of the grant of probate, letters of administration or like order of a court to prove the due execution of the testamentary document concerned.

(2) **In civil proceedings, section 78(1) does not prevent the admission or use of evidence that a party, or a person through or under whom a party claims, has been convicted of an offence, not being a conviction—**

⁹ SKBHC VAP2014/0021, delivered 13th October 2016, unreported at paragraph 23.

- (a) in respect of which a review or appeal, however described, has been instituted but not finally determined;
- (b) that has been quashed or set aside; or
- (c) in respect of which a pardon has been given.

(3) The hearsay rule and the opinion rule do not prevent the admission or use of evidence referred to in subsections (1) or (2).” (my emphasis)

[46] Section 79 of the **Evidence Act** permits the admission of evidence of convictions except in the specified cases under that section none of which applies in this case. The dicta in **Bergan v Evans** indicates how the Court is to treat such evidence.

What damages are to be awarded to the claimant?

[47] Mrs. Francis’ evidence is that damage was sustained to the Land Rover as follows: (a) right front and rear doors back and front; (b) right tyres; (c) back bumper; (d) complete right side smashed with major damages; (e) airbags deployed; and (f) the vehicle deemed a total loss. Mrs. Francis relies on an estimate of repairs from Mauricette’s Auto Repairs Inc. dated 30th June 2017, the Police Report and Invoice for cost of survey report dated 15th September 2017.

[48] Mrs. Francis claims special damages of \$144,120.75, interest and costs. It is trite law that special damages must be pleaded and particularised and of course, proved.¹⁰

[47] The particulars of special damages pleaded are as follows:

Pre-Accident Value	\$162,000.00
Less Salvage Value	<u>\$ 25,000.00</u>
	\$137,000.00
Cost of Survey Report	\$ 337.50
Storage of vehicle	\$ 3,533.25
Cost of advertisement of wreck for sale	\$ 1,500.00
Loss of use for 10 days@ \$175.00 per day	\$ 1,750.00

¹⁰ *Ilkew v Samuels* [1963] 2 All ER 879.

- [48] Mrs. Francis' evidence is that due to the fact that the Land Rover was insured with St. Lucia Insurances, the receipts relating to the damages claimed are in the name of the Insurer as they are entitled to intervene in the process of assessment of the damages under the policy of Insurance.
- [49] Mr. Eric Paul, Claims Manager of the insurer of the Land Rover, Saint Lucia Insurances Limited says as the insurer, they have an interest in the proceedings by way of subrogation. He confirms that the 'receipts' received in the name of Saint Lucia Insurances Limited are in direct relation to the damages to the Land Rover.
- [50] This is 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. Therefore, the deceased's insurer, Saint Lucia Insurances Company Limited would have paid the claim and according to Mr. Paul's evidence on cross examination; the cheque was paid on 15th September 2017. That information is critical to a subrogation claim but was not part of the evidence in chief. No evidence was presented of what was actually paid by the insurer which to my mind is important in a subrogation claim.

Value of vehicle

- [51] The estimate of repairs from Mauricette's Auto Repairs Inc. shows a pre-accident value of \$162,000.00 and a salvage value of \$30,000.00. According to Mr. Paul and supported by receipt no. 25793 dated 30th January 2018, the wreck was sold for \$25,000.00.
- [52] Mr. Charles in his submissions suggests that despite the disparity of \$5,000.00, the claimant is entitled to the pre-accident value less the sum of \$25,000.00 as the \$5,000.00 is not unreasonably less than the 'estimated' figure of \$30,000.00 in the estimate of repairs provided by Mauricette's Auto Repair Inc .

[53] I am afraid I am unable to accept this submission. The estimate of repairs is what would have been used by the insurer to pay out the claim in September 2017. At that time there was no evidence of \$25,000.00 as the wreck was sold long after the claim was paid. I therefore award the sum of \$132,000.00 as the value of the vehicle being \$162,000.00 minus \$30,000.00.

Other special damages claimed

[54] The documentary evidence provided by Mrs. Francis comprise invoices for the cost of the survey report, cost of advertisement of wreck for sale and rental of a vehicle for 10 days. Special damages relate to out of pocket expenses incurred. None of the invoices provided by Mrs. Francis except the one relating to storage of the Land Rover after the accident show that the expenses were actually incurred and paid.

[55] Mr. Theodore KC invites the Court to find that the claimant ought not to recover the full sum of \$3,533.25 for storage of the wreck as the sum is wholly unreasonable in light of the fact that the vehicle was deemed a write off. I agree but for different reasons.

[56] In relation to the storage fees, the claimant would have been paid this claim on 15th September 2017 after which time the wreck would have been in the possession of the insurer and not the insured. As the Court was not furnished with what was actually paid in the claim, it is assumed that the value of the vehicle was paid less the salvage for the wreck which would mean that the wreck remained in the insurer's possession and they would attempt to sell it and recoup the salvage value. I therefore agree that the full storage fees cannot be paid to the claimant. In fact, (i) the time period for storage is 22nd June 2017 to 30th June 2018 and is dated 2nd October 2018 which latter date is beyond the sale date of the wreck and (ii) the invoice was paid on 15th October 2018.

[57] In these circumstances, I am prepared to find that the wreck would have had to be stored by the claimant for some time and that after his claim was paid, storage became the insurer's responsibility. The period between the accident

and the date the claim was paid is 83 days which amounts to \$698.86 and I award that sum for storage.

[58] Despite the fact that there is no evidence that the amount claimed for loss of use was actually incurred, I am prepared to award the sum claimed as it is reasonable that the claimant would have had to have alternative transportation arrangements and the period of loss of use claimed is not unreasonable. I therefore award \$1,750.00 in this regard.

[59] The damages claimed for the cost of the survey report and the advertisement of the wreck for sale in the sums of \$337.50 and \$1,500.00 respectively are not awarded as there is no evidence that these amounts were actually paid.

[60] This is a subrogation claim in which the insurer seeks to recover the monies which it would have paid to its insured or on his behalf in relation to a claim. It is therefore important that the Court be provided with information as to what was paid by the insurer. Even where this is made available as part of the evidence, the claimant must still meet the requirements to be able to claim special damages and evidence that the amounts claimed were incurred must be provided.

Order

[61] I therefore make the following order:

(1) Judgment is therefore entered for the estate of Norman Francis represented by Eleanor Francis.

(2) The defendant is to pay the estate of Norman Francis

(a) special damages in the sum of \$134,448.86 with interest thereon at the rate of 3% per annum from the date of the accident, 22nd June 2017 to the date of trial, 20th October 2021 and thereafter, at 6% per annum thereon from the date of judgment to the date of payment;

(b) prescribed costs in the sum of \$19,306.12

[61] I sincerely apologise to Counsel and the parties for the delay in delivery of this decision and thank them sincerely for their patience and understanding.

Kimberly Cenac-Phulgence
High Court Judge

By the Court

A handwritten signature in black ink, appearing to be 'J. M. S.', written in a cursive style.

Dp. Registrar