

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

GRENADA

CLAIM NO. GDAHCV2016/0125

BETWEEN:

CELESTINE MORAIN

Claimant

and

[1] ST. GEORGE'S UNIVERSITY LTD.

[2] WESLEY LUCAS

Defendants

Before:

The Hon. Mr. Justice Raulston L. A. Glasgow

High Court Judge

Appearances:

Ms. Hazel Hopkin for the Claimant

Mr. Deloni Edwards with Mr. Zuriel Francique for the Defendants

2022: June 17;
July 29;
October 11.

JUDGMENT

[1] **GLASGOW, J.:** This is a claim for loss and damage arising out of a motor vehicle collision between the vehicle driven by the claimant, (Mr. Morain), and the vehicle driven by the second defendant, ("Mr. Lucas"). The collision occurred on 1st October 2014 along the Maurice Bishop Highway, Point Salines, in the parish of Saint George in the vicinity of the former Rex Grenadian Hotel (now Royalton Grenada).

Claimant's case

- [2] Mr. Morain is a taxi driver and was the owner of motor vehicle registration number HAE19. His claim is that on or about 1st October 2014, he was driving along the Point Salines main road in the direction of the Maurice Bishop International Airport when he noticed Mr. Lucas who was ahead of him driving in the same direction had moved his vehicle to the extreme left of the road. Upon observing Mr. Lucas' manoeuvre to the left side of the road, Mr. Morain pleads that he blew his horn and turned on his right indicator to signal that he was moving away.
- [3] Mr. Morain claims that he was about half way alongside Mr. Lucas' vehicle when Mr. Lucas suddenly swerved right colliding with his vehicle causing extensive damage to it. He pleads that the collision was caused solely by Mr. Lucas' negligence. By way of particulars of negligence, Mr. Morain pleads that Mr. Lucas -
- (1) Failed to keep a proper lookout or have regard for other traffic on the road;
 - (2) Failed to heed the presence of Mr. Morain's vehicle;
 - (3) Failed to indicate, signal or warn other roads that he intended to turn right;
 - (4) Failed to ensure that it was safe to turn right;
 - (5) Failed to apply his brakes or steer or control his vehicle as to avoid the collision;
 - (6) Drove without due care and attention.
- [4] With respect to relief, Mr. Morain claims damages for loss and damage to his vehicle; damages for the injuries and loss he sustained as a result of the collision; interest; and costs.

Defendants' case

- [5] On 20th May 2016, the defendants filed a defence denying Mr. Morain's claim. The defendants plead that:

- (1) On the date of the collision, Mr. Lucas was driving on the left side of the Point Salines main road in the direction of the Maurice Bishop International Airport when observed Mr. Morain driving about 60 feet away behind him;
- (2) Mr. Lucas turned on his right indicator and attempted to make a right turn into the entrance of the Rex Grenadian Hotel. While Mr. Lucas was manoeuvring the vehicle to the right of the road, Mr. Morain, without warning, attempted to overtake his vehicle and collided with it;
- (3) As a result of the impact Mr. Lucas claims that he suffered injury and his vehicle was pushed partly off to the left side of road the causing severe damage to it. Mr. Lucas claims that the collision was caused solely by Mr. Morain's negligence;
- (4) Mr. Morain failed to observe the rules of the Road Traffic Act and drove at an excessive speed;
- (5) Mr. Morain caused his own injuries by driving without due care and attention. They deny liability for Mr. Morain's injuries, loss of income or expenses.

[6] The defendants pray that the claim be dismissed and counterclaim for –

- (1) Damages for loss and damage to motor vehicle number PV869 in the sum of \$49,720.00
- (2) General damages for personal injury sustained by Mr. Lucas;

(3) Special damages for personal injury suffered by Mr. Lucas in the sum of \$823.84;

(4) Interest; and

(5) Costs.

Summary of the Evidence with respect to the collision

Celestine Morain's evidence

- [7] Mr. Morain claims that on the day of the collision he was driving on the Point Salines main road behind the coaster bus driven by Mr. Lucas. There were other vehicles behind him. The road was clear and there was no oncoming traffic in the opposite lane. Mr. Morain pleads that his vehicle was about forty to fifty feet behind Mr. Lucas. He avers that when Mr. Lucas' got to the vicinity of the Rex Grenadian Hotel's entrance, he observed the vehicle move to the extreme left of the road. He then blew his horn, and turned on his right indicator and proceeded to overtake Mr. Lucas' vehicle. While Mr. Morain was overtaking, Mr. Lucas, without any warning, swerved towards him colliding with his vehicle in the middle of the road. He claims that Mr. Lucas' vehicle collided with the front left side of his vehicle.

Wesley Lucas' evidence

- [8] Mr. Lucas gave his version of the incident. He states that he was driving in the direction of the airport. When he was about one hundred feet away from the entrance of the Rex Grenadian Hotel, he decided to turn on his right indicator. He then moved all the way to the left side of the highway so as to make a U-turn to proceed in the opposite direction. Mr. Lucas claims that at the time when he was proceeding to make the U-turn, Mr. Morain's vehicle was about five hundred feet behind him closer to the Special Services Unit ("SSU") camp of the Royal Grenada Police Force. As he was into the turn, he observed that Mr. Morain was driving at

no less than 90-100 miles per hour. Having regard to Mr. Morain's speed, Mr. Lucas claims that it would have been impossible for Mr. Morain to decelerate in a timely manner to avoid colliding with his vehicle. He asserts that Mr. Morain swerved left and then right and crashed into his vehicle which was already on the right side of the road facing the Rex Grenadian hotel. The impact pushed his vehicle almost off the road and into the bushes located at the entrance of the hotel.

Michael Mc Sween's evidence

- [9] Mr. Mc Sween is the Manager of the Transportation Department at St. George's University ("SGU"). Mr. Mc Sween did not witness the collision, but states that he visited the scene having received a call from one Mr. Randolph Thomas about the incident. Upon his arrival he observed the presence of the police and bystanders. He noted the damages to the vehicle driven by Mr. Lucas which was owned by Saint George's University

Brawn Green's evidence

- [10] Mr. Green states that on 1st October 2014 at about 7:00 am he was driving along the Maurice Bishop Highway in the direction of the airport, when he observed two vehicles ahead of him driving in the same direction. Mr. Green states that he observed Mr. Morain's vehicle was driving toward the airport just before the Rex Grenadian Hotel. Mr. Green claims that Mr. Lucas's vehicle, without indicating, started turning to the right heading towards the entrance to the Rex Grenadian hotel. He also observed that Mr. Morain's vehicle was about less than 25 feet behind with its right indicator flashing. Mr. Morain blew his horn. However Mr. Lucas' vehicle turned right across the path of Mr. Morain's vehicle toward the entrance to the hotel and both vehicles collided.

Police Report of Investigating Officer PC#775 Kenneth Chasteau.

[11] Officer Chasteau asserts that on 1st October 2014 a call was received at 7:00am at the South St. George Police Station to attend to a traffic collision. Upon Officer Chasteau's arrival to the scene of the collision he observed-

- (1) The collision occurred close to the entrance of the Rex Grenadian Hotel;
- (2) The road surface was smooth, wet and flat at the time with white painting.
- (3) Visibility was very good in all directions;
- (4) Both drivers were taken to seek medical attention before the police arrived at the scene;
- (5) Motor Vehicle no. PV 869 was completely off the road surface on the left side towards the direction of Grand Anse with only its right rear wheel on the road;
- (6) Motor vehicle no. PV 869 suffered damage to its right side panel, front windscreen, front panel and front bumper;
- (7) Motor vehicle no. HAE19 suffered damage to its front, sliding door, roof and front windscreen

[12] Officer Chasteau took the following measurements at the scene of the collision:

PV 869 facing towards the direction of Grand Anse

Width of road - 38 feet 6 inches
Right rear wheel to right of road - 26 feet 6 inches
Length of bus - 23 feet
Width of bus - 7 feet

HAE19 facing towards the direction of Point Salines

Right front wheel to right of road – 3 feet
Right rear wheel to right of road – 3 feet
Left front wheel to left of road – 24 feet 6 inches
Left rear wheel to left of road – 23 feet
Length of bus – 16 feet
Width of bus - 6 feet

Findings

[13] With respect to the collision, the following are the main factual disputations-

- (1) Whether Mr. Lucas turned on his right indicator before proceeding to turn into the right lane of the road?
- (2) What was the distance between Mr. Lucas' vehicle and Mr. Morain's vehicle before the collision?
- (3) What was the point of impact?
- (4) Which party is liable for the cause of the collision?

Whether Mr. Lucas turned on his right indicator

[14] Mr. Lucas claims that he turned on his right indicator signalling his intention to turn into the right lane after he manoeuvred his vehicle to the extreme left of the road. Both Mr. Morain and the witness, Brawn Green deny this. Apart from Mr. Lucas' assertions, he has failed to lead any other evidence to support his claim. Mr. Morain and Mr. Green, in contrast, both dispute that Mr. Lucas turned on his right indicator. While I have not been provided with any evidence that Mr. Lucas has lied about his actions on that day, I accord more weight to the evidence given by Mr. Green and Mr. Morain on this issue. Of significance is the fact that Mr. Green is a third party witness to this collision who has not been shown to have provided evidence lacking credibility. In the circumstances, I find that Mr. Lucas failed to turn on his right indicator to signal his intention to Mr. Morain and other drivers that he desired to proceed to turn into the right lane near the entrance of the Rex Grenadian Hotel.

Distance between the vehicles immediately before the collision

[15] Mr. Morain claims that while he was driving his vehicle driving along the Maurice Bishop Highway, he observed that Mr. Lucas' vehicle was about 40 to 50 feet ahead of him. The defendants deny this and plead in their defence that Mr. Morain was driving about 60 feet behind Mr. Lucas. There are some inconsistencies in Mr.

Lucas' evidence. Mr. Lucas at paragraphs 9 and 10 of his witness statement stated –

“Having ensured that it was safe to do so (the only vehicle on the road was the Claimants [sic] vehicle which was about **500 feet away near the SSU camp**), I began turning right so as to make the U-turn.

During the process of me turning, I observed the claimant speeding along the road after of [sic] the SSU camp. **This was about 300 yards away.**”

[16] This evidence is vastly different from the distance pleaded in the defence. That inconsistency was brought up at trial where Ms. Hopkin cross-examined Mr. Lucas on his statements with respect to the distance between the vehicles while he was making the right turn in the vicinity of the Rex Grenadian Hotel. Ms. Hopkin asked Mr. Lucas: “so you are saying while you making this turn Mr. Morain was 900 feet away from you?” Mr. Lucas replied “[w]ell it could be an error from feet to yards...I wanna [sic] believe. That could be a slip of the thing right there. But what I'm saying is that the speed in which he was coming at...he came with no intention to stop...”

[17] Counsel Ms. Hopkin submits that the SSU camp is approximately 1240 feet away from the former Rex Grenadian Hotel entrance. The court having conducted a site visit on the day of the trial was able to appreciate the great distance between the entrance of the Rex Grenadian Hotel (now Royalton Resorts) and the SSU camp. In my view, Mr. Lucas' claim that Mr. Morain's vehicle was near the SSU camp while undertaking his U-turn is an exaggeration. The fact that Mr. Lucas was not able to complete the U-turn suggests that Mr. Morain was not that far behind as he claims. Certainly, if Mr. Morain was near the SSU camp when Mr. Lucas was in the process of making that U-turn from the left lane, then Mr. Lucas would have been able to successfully complete his manoeuvre into the right lane. Having regard to the above inconsistencies, on this point, I prefer and accept Mr. Morain's evidence that immediately before the collision he was driving about 40 to 50 feet away behind Mr. Lucas.

Point of impact

[18] The parties have divergent accounts of the point of impact at the time of the collision. Mr. Morain claims that the *“right front side of the coaster hit the front side of my vehicle¹”*. Mr. Lucas asserts that *“[b]ecause of the way the claimant manoeuvred his vehicle the first point of impact was to the passenger side of the claimants [sic] vehicle and the entire front of his vehicle grated along the vehicle driven by me and eventually stopped on the driver’s side due to the force of the impact²”*.

[19] The pictures tendered by Mr. Lucas show that the most of the damage from the collision occurred in the midsection of the vehicle. In respect of Mr. Morain’s vehicle, I observe from the pictures that most of the damage occurred to its front. Indeed, this is bolstered by the independent evidence of Officer Chasteau in his police report whose report states that Mr. Morain’s vehicle suffered damages to its front, sliding door, roof and front windscreen. The foregoing evidence suggests and I accept that the front left of Mr. Morain’s vehicle collided with the middle section of Mr. Lucas’ vehicle at the time of the collision and as such this formed the point of impact.

Cause of the collision

[20] At the time of the collision both Mr. Lucas and Mr. Morain were driving along the Maurice Bishop Highway in the direction of the airport near the vicinity of the Rex Grenadian Hotel. There was some inconsistency in Mr. Lucas’ evidence on whether he was making a right turn into the driveway of the Rex Grenadian or making a U-turn into the right lane in front of Hotel’s entrance. However, nothing significant to the outcome of this case turns on this inconsistency since it is not disputed that at the time of the collision Mr. Lucas manoeuvred his vehicle into the

¹ Paragraph 4 of the Witness statement of Celestine Morain

² Paragraph 15 of the Witness statement of Wesley Lucas

right lane near the vicinity of the entrance to the Rex Grenadian Hotel. Indeed, both parties accept that this collision occurred in the vicinity of the entrance to the hotel. I accept Mr. Lucas' evidence that he steered his vehicle to the extreme left of the road and decided to make a U-turn into the right lane whether it was to enter the hotel or to enter into the right lane. In my view, the evidence suggests that while Mr. Lucas was making that U-turn into the right lane, Mr. Morain was simultaneously attempting to overtake him in that same right lane. These were dangerous manoeuvres being undertaken by both parties.

- [21] It is well-established case law that drivers owe a duty of care to other road users. This principle of law was adopted by Price Findlay J in **James A. L. Bristol v Margaret Blackburn**³, where her Ladyship recited a passage from Rawlins J's judgment in **Cheryl Edwards Administratrix of the Estate of Janique Lewis v Ethel Mills**⁴ that:-

...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 are expected to use and to observe proper signals. **Signals must be clear and unambiguous and as far as practicable in keeping with the Highway Code.** 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." (My emphasis)

Mr. Lucas' contribution to the collision

- [22] The fact that Mr. Lucas steered his vehicle to the extreme left of the road and immediately began to make a U-turn into the right lane was a dangerous manoeuvre to undertake on the highway. This is especially so where there were other vehicles trailing behind him in close proximity. Mr. Lucas was under a duty to ensure that Mr. Morain and other drivers behind him knew of the manoeuvre he

³ GDAHCV2005/0144 or [2015] ECSCJ No. 297

⁴ ANUHCv1998/0168 or [2002] ECSCJ No. 78

was about to undertake. Additionally, Mr. Lucas failed to keep a proper lookout for other road users by failing to ensure that no one was overtaking him before he began to make that U-turn. Mr. Lucas in his witness statement admits that “during the process of me turning, I observed the claimant speeding along the road after the SSU camp.” In other words, when Mr. Lucas was making that right turn he observed Mr. Morain’s vehicle attempting to overtake him. At that point it would have been too late for Mr. Lucas to avoid the collision since he was already in the middle of the road.

Observation from the court’s site visit

- [23] During the court’s site visit to the scene of the collision⁵, I observed that the road where the collision occurred is a highway. Further, I observed that the highway is a long stretch of road and drivers enjoyed full and unobstructed views of oncoming traffic in either direction. What is noteworthy is that there is a demarcated middle lane dedicated for drivers desirous of turning right to enter the driveway of the former Rex Grenadian Hotel. Mr. Lucas does not state and it is evident that he did not utilise this middle lane. At trial and under cross-examination Ms. Hopkin asked Mr. Lucas *“[s]o a vehicle trying to get into Rex Grenadian Hotel should have been in the middle lane?”* to which he replied “yes”. The significance of this is that had Mr. Lucas utilised the middle lane he would not have impeded the flow of traffic in either lane of the highway. In my view, Mr. Lucas was negligent and ought to have utilised this middle lane to make the right turn.

Mr. Morain’s contribution to the collision

- [24] With respect to Mr. Morain’s overtaking manoeuvre, the case law suggests that when a driver is preparing to overtake, that driver should ensure that there is sufficient space ahead of him to successfully complete his overtaking. In **McCall v Ogiste**⁶, Phillips JA stated “[t]he law places the onus on the driver of an overtaking vehicle to make sure that that movement is safely conducted and completed; one

⁵ 17th June 2022 (Date of trial)

⁶ (1965) 9 WIR 291

must make sure that one can pass a vehicle and get back at once to the proper side before the approach of oncoming vehicles⁷.”

[25] The evidence suggests that Mr. Morain observed Mr. Lucas steering his vehicle to the extreme left of the road. It is at this point that Mr. Morain had a duty to slow down and keep a proper lookout before conducting an overtaking manoeuvre. However, it appears that Mr. Morain decided to continue with his actions to overtake Mr. Lucas’ vehicle. This, in my view, was a grave error of judgment. There is an additional element here. Mr. Lucas was driving a “Coaster” bus which is considerably larger than the minibus which Mr. Morain was driving. Having regard to size of the bus, and his close proximity to the bus while it was driving, I am of the view that Mr. Morain should have been proceeding with a lot more caution when seeking to conduct a dangerous action like overtaking.

[26] Mr. Morain asserts at paragraph 4 of his witness statement that he “*was about halfway alongside that vehicle when, without any warning, the driver swerved towards me, hitting me in the middle of the road.*” However, I do not accept this assertion. The photographic evidence tendered by Mr. Lucas which was taken at the scene of the collision is telling. The photographs show and I accept that Mr. Lucas’ vehicle was impacted in the midsection near the right door. This evidence suggests that Mr. Morain’s vehicle was very close to Mr. Lucas’ vehicle when he sought to overtake him. In fact I fear that when Mr. Morain was trying to overtake Mr. Lucas, Mr. Lucas was already in the process of turning and was in all likelihood in the middle of the road when the collision occurred. At trial Mr. Morain admitted that he was speeding at the time since he was already in the process of overtaking. I am of the view that Mr. Morain was also negligent in his driving.

[27] The foregoing facts lead me to conclude that both parties were undertaking dangerous manoeuvres without employing the requisite due care and attention for other road users. Mr. Morain was negligent in that he failed to maintain a safe distance behind Mr. Lucas’ vehicle at all times and conducted a dangerous

⁷ Ibid at page 293

overtaking manoeuvre when it was not safe for him to do so. Mr. Lucas was also negligent, in that he failed to use the middle lane in order to make the right turn, failed to indicate that he was turning and conducted a dangerous U-turn manoeuvre when it was not safe for him to do so. Both parties are therefore partly successful; that is Mr. Morain is partly successful on his claim and the defendants are partly successful on their counterclaim. The extent of their liability is equal that is to say that they are both 50% liable for the collision. They are therefore entitled to 50% of their claim for damages against each other.

Relief

Mr. Morain's claim for damages

[28] I note that Mr. Morain claimed special damages but did not plead any general damages in his claim. Mr. Morain, in his claim, pleads that he suffered loss and damages as a result of the collision. Mr. Morain claims medical expenses in the sum of \$1,847.50; loss of income in the sum of \$8,400.00. Further, Mr. Morain claims damages and expenses with respect to his vehicle HAE19 as follows:

(1) Replacement value of HAE19	\$ 60,000.00
(2) Loss of use:	
(a) 22/10/14 to 3/01/15 (\$200.00 p.d.)	\$ 14,800.00
(b) 4/01/15 to 4/4/15 (\$175.00 p.d.)	\$ 15,925.00
(3) Loan expenses:	
(a) Republic Bank (Grenada) Ltd. loan for vehicle HAE19 (\$2,500.00 p/month for 6 months)	\$ 15,000.00
(b) Bank fees to process new loan	\$ 400.00
(c) Stamp duty on bill of sale	\$ 706.00
(4) Towing fee paid to Japal's Autobody	\$ 172.50
(5) Accident report by Pegs Enterprises Ltd	\$ 260.00
(6) Police report	\$ 10.00
(7) Letter before action	\$ 287.50
Total	\$ 107, 561.00

[29] It is well-established that special damages must be pleaded, particularised and proved. An exception to this rule is where a claimant has prima facie established

his loss (reasonable loss) and that loss not been challenged by the defence⁸. In this case, the defendants in their defence have denied those damages and losses claimed by Mr. Morain at paragraphs 4, 5 and 6 of his statement of claim. I note that some of the expenses and damages claimed by Mr. Morain have not been supported by any evidence, in particular, the replacement value of his HAE19 vehicle, loss of use and loss of income.

[30] Mr. Morain pleads that he was out of work as a taxi driver for about 21 days (1st October 2014 to 21st October 2014). With respect to the loss of income for that period, Mr. Morain claims the following:

- (1) Mc Intyre Bros Ltd. (\$133.33 per day) = \$2,799.00
 - (2) St. James Travel & Tours (83.33 per day) = \$1,749.93
 - (3) Grenada Airport Taxi Association (\$150.00 per day) = \$3,150.00
 - (4) Luggage drop-off for airlines (\$16.67 per day) = \$350.07
 - (5) Patrick Thomas (\$16.67 per day) = \$350.07
- Total = \$8,400.00

[31] Firstly, I find that the period over which those losses have been claimed is not unreasonable. Mr. Morain has lead evidence proving his loss of income from for Mc. Intyre Bros Ltd and St. James Travel & Tours Ltd. He has tendered letters from management⁹ of those companies disclosing his monthly income. However, apart from Mr. Morain's bare assertions, he has not lead any evidence to support loss of income with respect to the Grenada Airport Taxi Association; luggage drop-off for airlines and loss of income from Patrick Thomas. Where there is no proof of loss but the court is satisfied that loss would, in all likelihood, have been suffered, the court may exercise its discretion to award nominal damages. I am satisfied that Mr. Morain may have suffered loss of income from Grenada Airport Taxi Association, luggage drop off and with respect to Patrick Thomas. I will award

⁸ As per Bernard CJ in *Grant v Motilal Moonan Ltd and Another* (1988) 43 WIR 372 (See Headnote)

⁹ Claimant's List of Documents Mc Intyre Bros Ltd at page 39 and St. James Travel & Tours Ltd at page 45 of the Trial Bundle

nominal damages of \$1,000.00 for the Grenada Airport Taxi Association and \$150.00 each for the luggage drop off loss and for the loss with respect to Patrick Thomas. Mr. Morain is awarded loss of income with respect to Mc Intyre Bros Ltd. and St. James Travel & Tours Ltd in the sum of (\$2,799 + \$1,749.93) for those losses. In total Mr. Morain is awarded loss of income in the sum of \$5,883.93. In view of my finding that Mr. Morain is 50% liable for the collision, this loss of income will be reduced by 50% to \$2,941.96.

[32] Additionally, Mr. Morain claims loss of use in the sum of \$30,725.00 for the period between 22nd October 2014 and 4th April 2015 when it appears that he was in a position to resume work as a taxi driver but was without his vehicle. The defendants deny this loss and put Mr. Morain to strict proof. Again I note that Mr. Morain has not tendered any evidence as to the extent of his loss including the basis for and amount of his daily loss. I am satisfied that Mr. Morain replaced his vehicle (HAE259) in April 2015 when he obtained financing in the sum of \$50,000.00 from the Republic Bank¹⁰ to purchase another vehicle. Therefore, he was without a vehicle from date of the collision to April 2015. I am also satisfied that he would have suffered loss of use for the period that he was in a position to work (22nd October 2014 to 4th April 2015) but was without a vehicle. However, in light of the other deficiencies as to proof of this loss, I am satisfied that an award in the sum of \$20,000.00 as nominal damages for loss of use will provide adequate relief to him. In view of my finding that Mr. Morain is 50% liable for the collision, the nominal damages for loss of use will be reduced to \$10,000.00.

[33] Further, Mr. Morain claims the sum of \$60,000.00 for the replacement value of his vehicle. However, apart from his pleadings, he has failed to provide any evidence in support of the claim for \$60,000.00. He has produced a receipt obtained from Pegs Enterprises Ltd indicating payment for an “accident report” which may have provided a basis for the value claimed (pre-collision value less post-collision value) but he has not tendered a copy of the report to the court. Therefore, there is no

¹⁰ Letter advising of credit facilities from Republic Bank pages 40-43 of the Trial Bundle

basis on which this court can properly assess the replacement value of the vehicle. Although Mr. Morain has failed to specifically prove this loss, having regard to the evidence from Officer Chasteau in his observations about the damages to both vehicles and the photographs of the aftermath of the collision, I am satisfied that Mr. Morain's vehicle was severely damaged. In all likelihood, the extent of the damage supports a reasonable conclusion that it may have had to be replaced. In the absence of the actual replacement cost, I will award the nominal sum of \$30,000.00 for the replacement value of Mr. Morain's vehicle. That nominal sum of \$30,000.00 will be reduced by 50% to \$15,000.00 to reflect the extent of his responsibility for the collision.

[34] Mr. Morain's medical expenses in the sum of \$1,847.50 have been pleaded and proved. With respect to the expenses associated with the damage to the HAE19, that is, the towing fee of \$172.50¹¹, collision report from Peg's Enterprises Limited of \$260.00¹², police report of \$10.00¹³ and letter before action¹⁴ of \$287.50 totalling \$730.00 have all been specifically pleaded, particularised and proved. Again, each of the above expenses will be reduced by 50%. Therefore, Mr. Morain's medical expenses totalling \$1,847.50 will be reduced to the sum of \$923.75. The expenses associated with damage to the vehicle totalling \$730.00 will be reduced to \$365.00.

[35] With respect to Mr. Morain's claim for loan expenses in the sum of \$16,106.00, I note that he has tendered evidence from Republic Bank¹⁵ which outlined that he obtained the sum of \$50,000.00 in order to purchase a new vehicle. These expenses and fees associated with this loan have been pleaded, particularised and proved. However, having regard to contribution to the collision, the grant of an award for those expenses will be reduced by 50% to \$8,053.00.

¹¹ Exhibited at page 68 of the Trial Bundle

¹² Exhibited at page 74 of the Trial Bundle

¹³ Exhibited at page 76 of Trial Bundle (dated 9th December 2014 from the "Treasury, Grenada")

¹⁴ Exhibited at pages 46-49 of the Trial Bundle

¹⁵ Exhibited at pages 40-43 of the Trial Bundle

The defendants' counterclaim for damages

[36] The vehicle driven by Mr. Lucas on the day of the collision was owned by first defendant, St. George's University Ltd. Mr. Lucas and the University claim that as a result of Mr. Morain's negligence they suffered loss and damages to the vehicle PV869 as follows –

- (1) Replacement value –pre-collision value - \$49,000.00
 - (2) Surveyor's fees - \$320.00
 - (3) Towing fees - \$300.00
 - (4) Wreckage transfer cost - \$100.00
- Total \$49,720.00

[37] With respect to the Mr. Lucas, the defendants plead that he incurred the following expenses:

- (1) X-ray fees – \$160.00
 - (2) Fees for SGU Health Clinic Services -\$136.00
 - (3) Medication – \$117.84
 - (4) Fees for Dr. Douglas Noel's consultations - \$410.00
- Total \$823.84;
- (5) Physiotherapy - \$720.00.(Receipts for physiotherapy are found at pages 100-101 of the trial bundle totalling the sum of \$720.00)

[38] At trial, Mr. Lucas presented evidence of further costs incurred post filing of the claim. These moneys were paid to Dr. Noel 1st October 2021 to obtain medical report costing \$840.00 and for Dr. Noel's appearance fee at the trial in the sum of \$850.00. Mr. Lucas' total claim for special damages amounts to \$3,233.84.

[39] Mr. Morain has not specifically challenged these special damages except where in his pleadings he has denied that Mr. Lucas suffered those losses. The defendants

have presented evidence that they incurred these special damages. The defendants are entitled to recover 50% of what they claim as special damages. Mr. Morain shall pay the sum of \$24,860.00 (being 49,720.00 less 50%) to SGU and the sum of \$1,616.92 (being \$3,233.84 less 50%) to Mr. Lucas.

[40] In respect of the defendants' counterclaim for general damages, I am guided by the principles set out by the court in **Cornilliac v St. Louis**¹⁶. In **Cornilliac**, the court held that the following must be considered in assessing general damages-

- (1) the nature and extent of the injuries sustained ;
- (2) the nature and gravity of the resulting physical disability;
- (3) pain and suffering;
- (4) loss of amenities;
- (5) the extent to which pecuniary prospects were affected have also pleaded general damages.

[41] Mr. Lucas was born on 30th September, 1961 and has since retired from his employment at SGU where he worked as a driver. He states that after the collision, he experienced pain about his body and as such he was sent on sick leave for seven weeks. As it relates to his recovery he avers that he underwent two stints of physiotherapy, four sessions each.

[42] Mr. Lucas was examined by Dr. Noel who was called as an expert witness and presented medical reports in the proceedings. Dr. Noel examined Mr. Lucas on 31st March, 2015 and 1st October, 2021 and prepared medical reports dated 18th April, 2015 and 21st October, 2021. The medical reports outline the extent of Mr. Lucas' injuries. The particulars of injury are pleaded as follows-

- (1) Dislocation of right shoulder (right acromioclavicular joint)
- (2) Soft tissue injury to lower back
- (3) Soft tissue injury to lower head

¹⁶ (1965) 7 WIR 491

- (4) Right shoulder deformity due to dislocation
- (5) Pain to the right thigh due to nerve impingement in lower back.

- [43] Dr. Noel in his latest report dated 21st October 2021, stated that Mr. Lucas has fully recovered from his head injury. Dr. Noel notes, however, that Mr. Lucas continues to experience occasional pain to his lower back and right lower limb. As it relates to the pain in lower back and lower limb, Dr. Noel says that this pain may be exacerbated during physical activity, for example lifting, driving and walking. The doctor is of the view that Mr. Lucas may need oral medication for these pains as well as physiotherapy from time to time. With respect to the right shoulder pain, Dr. Noel states that this pain may continue intermittently. The deformity of Mr. Lucas' right shoulder is permanent but can be corrected by means of surgery.
- [44] At trial, Ms. Hopkin questioned Dr. Noel about the contents of his medical reports. In particular, Ms. Hopkin asked Dr. Noel whether his finding of mild degenerative changes to the lumbosacral spine and loss of lordosis were pre-existing conditions. Dr. Noel stated that it is possible Mr. Lucas' complaint of right thigh pain could have been attributable to the collision since that sort of pain can be due to nerve pressure in the lumbosacral spine.
- [45] With respect to the assessment of general damages, Counsel for the defendants, Mr. Deloni Edwards, relies on the awards for pain and suffering set out in **Elroy Matthews v Shawn Sutherland et al**¹⁷ and **Mary Anderson v Kenson Donacien et al**¹⁸.
- [46] I find that Mr. Lucas suffered similar injuries to that of the claimant in the **Elroy Matthews** (2015 personal injury case). In that case, the claimant (Mr. Matthews) fell from a ceiling where he was installing a sheet of plywood and suffered injuries to his back and shoulder. He also suffered from a dislocated shoulder and required physiotherapy. Upon further examination, Mr. Matthews' doctor observed that he

¹⁷ SVGHCV2012/0121

¹⁸ SLUCHCV2013/0965

continued to experience pain and had degenerative disease caused by trauma to his dislocated shoulder. In that case, Mr. Matthews was awarded the sum of \$35,000.00 for pain and suffering and loss of amenities. I note Mr. Lucas has not pleaded any loss of amenities and as such no award shall be given for that loss. Having examined the above cases and the extent of Mr. Lucas' injuries and his pain and suffering, I find the sum of \$40,000.00 will provide adequate relief for his pain and suffering. However, in light of my finding that Mr. Lucas was also negligent and is 50% responsible for the collision on the day in question, that sum of \$40,000.00 will be reduced by 50% to \$20,000.00.

Costs

- [47] Having regard to my finding that both parties are equally liable for the collision, I am of the view that each party should bear their own costs.

Conclusion

- [48] For all these reasons, I hereby order as follows:

- (1) As for Mr. Morain's claim, he is awarded:
 - (a) The sum of \$923.75 for his medical expenses;
 - (b) Damages for loss of income in the sum of \$2,941.96;
 - (c) The replacement value of HAE 19 in the sum of \$15,000.00;
 - (d) Damages for loan expenses in the sum of \$8,053.00;
 - (e) Loss of use in the assessed sum of \$10,000.00;
 - (f) Damages for cost of towing fee, collision report, police report and letter before action in total sum of \$365.00;
 - (g) Interest on the total special damages of \$37,283.71 at a rate of 3% per annum from 1st October 2014 to the date of trial in the sum of \$8,620.02;

- (h) In total Mr. Morain is awarded damages in the sum of \$45,903.73 inclusive of pre-judgment interest;
- (i) Interest on all damages awarded at a rate of 6% per annum from date of the judgment to the date of payment.

(2) As the defendants' counterclaim, they are awarded as follows-

- (a) The first defendant ("SGU") is awarded the sum of \$24,860.00 as special damages for the damage to PV869;
- (b) The second defendant ("Mr. Lucas") is awarded the sum of \$1,616.92 as special damages for medical expenses;
- (c) Mr. Lucas is awarded the sum of \$20,000.00 as general damages for pain and suffering;
- (d) Interest on the total special damages awarded to SGU and Mr. Lucas (\$24,860.00 + \$1,616.92) at the rate of 3% per annum from the 1st October 2014 (date of collision) to the date of trial in the sum of \$6,112.89;
- (e) Interest on the general damages for pain and suffering are awarded at the rate of 3% per annum from the date of service of the claim to the date of trial in the sum of \$3,685.08;
- (f) In total the defendants are awarded damages in the sum of \$56,274.89 inclusive of pre-judgment interest;
- (g) Interest on the global sum of damages awarded to Mr. Lucas at the rate of 6% per annum from the date of judgment to the date of payment;
- (h) Interest on the global sum of damages awarded to SGU at the rate of 6% per annum from the date of judgment to the date of payment.

(3) Each party shall bear its own costs

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar