

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

GRENADA

Claim number: GDAHCV2020/0161

BETWEEN:

**[1] RISHI HITAL
[2] ANSLEM STANISCLAUS**

Claimants

-and-

JENNY SAMUEL

Defendant

Before Master Alvin Pariagsingh

Appearance: Francis K. Paul for the Claimants; and
No appearance for the Defendant

2022: July 19

DECISION

Claimants' assessment of damages

- [1] **PARIAGSINGH, M:** The First Claimant is the common law wife of the Second Claimant. The Second Claimant has not given any evidence at this assessment of damages. The Defendant was served with notice of the date of the assessment on May 07, 2021 but has not filed anything in response nor did she attend the hearing.
- [2] On May 22, 2018 at about 10:20 pm a truck driven by the Defendant collided with the Claimant house causing the Claimants to suffer loss and damage.
- [3] On November 23, 2020 the Claimants obtained default judgment against the Defendant for a sum to be decided by the Court.

THE LAW:

- [4] The measure of damages recoverable in a negligence action, which is based in tort is based on the compensatory principle. Halsbury's Laws of England/Damages (Volume 29 (2019))/7. M at 408 states:

'Damages in tort are in general compensatory: they aim (subject to the rules of remoteness and mitigation) to make the claimant whole, but no more. This applies not only to negligence and similar torts, but also to torts such as conversion and deceit. In all cases the aim is to put the claimant in the position he would have occupied had the tort not been committed.

The above rule is nevertheless subject to three qualifications. First, restitutionary recovery may be allowed in respect of certain torts to deprive a defendant of his profits, though this is not a remedy generally available. Secondly, in certain proprietary torts, notably trespass and conversion, damages may be quantified by the value to the defendant of the use he has made of the claimant's property, a figure normally set at a reasonable wayleave or hire charge. To this extent liability may in one sense exceed the immediate loss to the claimant; however such damages may still be regarded as compensatory in so far as they seek to put a value on the claimant's rights which have been usurped by the defendant and thus to value the loss of use of the claimant's property. And thirdly, in a few well-defined cases punitive damages may be available in tort, whose effect is ex hypothesi to give an award amounting to more than the claimant's loss.'

THE EVIDENCE:

- [5] At the time of the accident, the Claimants used the downstairs of their house for storing clothing which they offered for sale.
- [6] The Claimants allege that as a result of the collision they suffered damage to their house and their gas stove.
- [7] The Claimants contend that before the accident their home was structurally sound but as a result of the accident, the house has suffered structural instability. In support of this contention the Claimants have put into evidence the report of Messrs. Joseph, John & Associates dated June 01, 2018. In this report, it is recommended that the entire top floor of the house be removed and replaced. It was recommended that the ground floor be restored. An estimate for the works was given in the sum of \$94,300.00.

[8] Two estimates were also admitted into evidence for the replacement of the stove. The first was for \$1,699.99 and the second was for \$2,199.99.

[9] The Claimants also contend that because of the severity of the damage to their home, they could not continue to reside in same and had to incur the expense of renting at \$450.00 per month from the May 24, 2018 to August 31, 2019 when they were able to return to their home after it was partially repaired.

[10] The Claimants obtained an estimate on May 24, 2018 from a builder Mr. Evans Bartholomew to replace the first storey of the house and repair the ground floor. This estimate was in the sum of \$99,600.00 comprising \$75,500.00 for materials and \$26,100.00 for labour.

[11] I accept the recommendation of Messrs. Joseph John & Associates Limited, engineers and Appraisers, for the complete removal and replacement of the upper floor and the restoration of the lower floor. Indeed, this evidence was not challenged.

[12] I note that this estimate was a few days after the estimate of Mr. Bartholomew, the builder hired by the Claimant but it was less than the sum quoted by Mr. Bartholomew. In this regard, I prefer the evidence of the engineers and appraisers. The sum awarded for the costs of repairs is the sum of \$94,300.00.

[13] At paragraphs 15 to 25 the Claimants give evidence of different sums spent on the repairs. The sums constitute a past pecuniary loss or special damages. However, since the Claimant cannot recover the sums under both under general and special damages, the sums spent will be deduced from the replacement sum.

[14] The following sums will be awarded as special damages:

1. Sums spent at LL Ramdhanny & Co Ltd in the sum of \$20,875.09;
2. Sums spent at La Poterie in the sum of \$2,633.43;

3. Sums spent at Sherwin Williams in the sum of \$1,728.27;
4. Sums spent at Jonas Browne & Hubbard in the sum of \$1,697.25;
5. Sums spent at Gravel Concrete and Emulsion Limited in the sum of \$636.20;
6. Sums paid to Ashley Marrast for plumbing \$1,500.00;
7. Sums paid to Byron Prince for electrical works \$1,200.00;
8. Sum paid to Wendell Samuel for a toilet set \$600.00;
9. Sum paid to Justin Edwards for balusters \$920.00;
10. Sums paid to Sparks Electrical in the sum of \$481.50;
11. Sum paid to Ben's Trucking in the sum of \$200.00.

Total- \$32,471.74

[15] In respect of the sum claimed for payments to Mr. Evans Bartholomew, no receipts were presented. No doubt, a receipt would have been issued or at minimum a witness statement would have been obtained to verify this sum. Accordingly, I am not awarding this sum under special damages.

[16] In respect of the other special damages claimed, the Claimants are entitled to recover the sums claimed for rent for 15 months in the sum of \$6,750.00. I am also minded to award the sum of \$1,699.99 claimed for the replacement of the stove. I have decided to award the lower sum of the two estimates as no evidence was led as to what type of stove the Claimants had before the accident. The higher estimate for the stove submitted being for a bigger size stove.

[17] In the circumstances, it is hereby ordered that:

1. The Defendant shall pay the Claimants:
 - i. General damages assessed in the sum of \$61,828.26 together with interest thereon at the rate of 6% from the date of the filing of the claim to today's date (777 days) calculated in the sum of \$7,897.01; and

- ii. Special damages assessed in the sum of \$40,971.23 together with interest thereon at the rate of 6% from the date of the filing of the accident to today's date (1,519 days) calculated in the sum of \$10,218.10.
2. Interest on the sums awarded at the rate of 6% per annum from today's date to the date of settlement of the judgment; and
3. 60% of their prescribed costs on the total value of the sums awarded (\$120,865.17) calculated in the sum of \$10,564.89.

Alvin Shiva Pariagsingh
High Court Master

By the Court,

Registrar