

**IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

Claim No: ANUHCV2017/0139

BETWEEN:

CHYLWIN BLAIR

Claimant

and

DAYTON SAMUEL

Defendant

Appearances:

Leslie Ann Brissett, Counsel for the Claimant

Jan Peltier, Counsel for the Defendant

2022: March 1st

ORAL DECISION

- [1] **GARDNER-HIPPOLYTE, M.:** This is an assessment of damages arising out of a vehicular accident on the 13th December, 2015. Judgment in default was granted on the 11th June, 2019.

Background

- [2] The Claimant indicated that he was driving along the Fort Road and was at a standstill at a traffic light when the Defendant collided with the rear of his vehicle. At the Emergency department of the Mount St. John's Hospital he complained of mild pain to the left side of his chest area, and an echocardiogram was done. The Claimant was diagnosed with mild chest trauma as the echocardiogram was normal and he was discharged with simple analgesia.
- [3] The Claimant has sought special damages for loss of vehicle, property damage, loss of earnings and cost of medical report. The amount claimed for special damages is \$63,949.53.

Special Damages

- [4] Special damages must be specifically proved.¹ As a general rule the law requires for example medical expenses, loss of earnings, and damage to property must all be strictly proven.²

Loss of Use

- [5] In **Tropical Builders v Gloria Thomas** Blenman J (as she then was) stated that “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.”³ The Claimant has provided two invoices from Top Floor Rent-a-Car for the periods 14th December, 2015 to 14th February, 2016 and 15th February, 2016 to 11th April, 2016. This brings it to a total of 120 days for rental of a vehicle at \$131.63 per day bringing it to a total of \$ 15,795.00.
- [6] The Claimant has indicated that he uses his vehicle to ply his trade and that he did not have the money to fix his vehicle. The Claimant has proved thus head of special damages and I consider this is a reasonable sum in the circumstances and will award the sum of \$15,795.00.

Loss of Income

- [7] At paragraph 5 of the witness statement the claimant refers to Loss of Earnings for three months at \$575.00. He has submitted payslips to show that this amount was his travel allowance that he was not paid because he did not have his vehicle. Accordingly, I will award the sum of \$1,725.00.

Cost of Medical Report

- [8] The Claimant has provided a receipt for this head of special damages in the sum of \$150.00. Accordingly, I will award this sum.

Damage to Property

- [9] The Claimant has submitted a damage report from Shaw Brother’s Enterprises, which states the cost of replacement parts are \$37,579.53 and labour at \$8,700.00. The report also has the pre-accident value at \$24,500.00 and the post-accident value at \$4,000.00. The Defendant has also provided the Court with information that he subsequently sold his vehicle for \$4,000.00.

¹ Murphy v Mills (1976) 14 JLR 119

² Ibid and Commonwealth Caribbean Tort Law, 4th Edition Gilbert Kodilinye at page 368.

³ Tropical Builders v Gloria Thomas ANUHCv 2004/0228 at paragraph 31

- [10] I do not agree with the submissions by Counsel for the Claimant that the Claimant is entitled to \$46,279.53 which is the combined amount of replacement parts and labour. Where the cost to repair the vehicle is more than the actual cost of the vehicle this is the more appropriate award that is given.
- [11] Counsel for the Defendant has proposed that the Court award \$8,000.00 which is the cost of a replacement vehicle. However, this is submitted through the Defendant's submissions and is not evidence before the Court. The evidence before the Court is the pre accident value which can be found in the report and I will award the same less the sale of the vehicle, which is \$20,500.00.

General Damages

- [12] Once a person suffers personal injuries they are entitled to general damages under the heads as set out in **Cornilliac v St. Louis** (1964) 7 WIR 491 at page 492:
- (a) The nature and extent of the injury sustained;
 - (b) The nature and the gravity of the resulting physical disability;
 - (c) The pain and suffering endured;
 - (d) The loss of amenities suffered; and
 - (e) The extent to which the claimant's pecuniary interests have suffered
- [13] In summary the claim suffered a mild chest trauma. Counsel for the Claimant has provided the case of **Dawn Yearwood-Stewart v Addison Abel et al**⁴ where the Claimant received \$1,500.00 for pain and suffering. It is suggested that an award of \$5,000.00 in the instant case is what should be awarded as compensation to the Claimant. Counsel for the Defendant has proposed \$1,000.00 and has provided **Frances et al v Gore and Charles**⁵ where the sum of \$1,000.00 was awarded. In light of the injuries sustained by the Claimant, the pain suffered⁶ and the evidence from the medical report that it was reported as a mild chest trauma, I will award the sum of \$2,000.00. There is no updated medical report to substantiate any further award.

Conclusion

- [14] The Defendant shall pay to the Claimant the following awards:
- (a) Special damages in the sum of \$38,170.00 with interest at 2.5% per annum from the date of the accident to 1st March, 2022;

⁴ DOMHCV 2009/0208

⁵ ANUHCv 2016/0472

⁶ Paragraph 3 of witness statement of Chylwin Blair

- (b) General damages - \$2,000.00, interest at 5% per annum from the date of service of the writ to today's date;
- (c) Interest on the special and general damages at \$40,170.00 from today until payment in full at 5%;
- (d) 60 % of Prescribed costs on the global sum in accordance with CPR 65.5;
- (e) The Claimant to draw, file and serve this Order.

Charon Gardner-Hippolyte
High Court Master

By the Court

Registrar