

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2019/0225

BETWEEN:

DWIGHT KELLY

1st Claimant

SHARALEE BENJAMIN-KELLY

2nd Claimant

And

RANDELLA GIBSON

Defendant

Before:

The Hon. Mr. Justice Trevor M. Ward QC

Appearances:

Ms. Tamara Malcolm for the Claimants.

Ms. Marsha Henderson for the Defendant.

2021: June, 03

2022: January 04

JUDGMENT ON ASSESSMENT OF DAMAGES

- [1] **WARD, J:** On 10th October 2018, the defendant's vehicle was parked along St. Johnson's Avenue. As the claimants' vehicle approached the defendant's vehicle, a passenger in the defendant's vehicle suddenly, and without warning, opened the front passenger door causing it to collide with the claimants' vehicle, causing the claimants' vehicle to sustain damage to the right front door and front of the vehicle on the right side. Consequently, the claimants brought an action against the

defendant claiming special damages in the sum of EC\$49,547.70, collection cost in the sum of EC\$4,954.77, interest and cost.

[2] The sum claimed for special damages was particularised as follows:

(i)Cost of Spares	\$10,775.07
(ii)Cost of Materials	620.09
(iii)Labour Cost	3,170.00
(iv)Estimate	150.00
(v)Vat on (Parts/ Materials)	<u>2,476.08</u>
Sub Total	<u>17,191.24</u>
Less deductible	750.00
	16,441.24
(vi)Loss of Use	14,580.00
(vii)Depreciation on Parts	3,196.46
(viii)Policy Deductible	750.00
Sub Total	<u>18,526.46</u>
Cost of Rental 3 months	14,580.00
Total	<u>\$49,547.70</u>

[3] On 3rd June, 2021, the defendant conceded the issue of liability; the matter thus proceeded to trial on quantum only. On that day also, the claimants abandoned the claim for loss of use and collection costs of \$4,954.77. This means that the sum now claimed as special damages is \$30,012. 93.

[4] Liability having been admitted, the question is what quantum of damages should be awarded. The onus is on the claimants to specifically plead and prove special damages.

Parts and materials

[5] The claimants seek to recover \$10, 775.07 for spare parts, \$620.09 for materials, plus vat on parts and materials in the sum of \$2, 476.08. The claimants rely on estimates of the cost of repairs provided by Jefferson Edwards Auto Repairs, C&C Auto Services Ltd and National Parts. It is noted, however, that the estimate provided by National Parts relates to parts only.

- [6] As it relates to the cost of parts, C&C's estimate is \$17, 426.26; Jefferson Edwards' estimate is \$10, 935.78 and the estimate from National Parts is \$5, 950.77. The quote from National Parts is billed to Jefferson Edwards. However, the estimated costs of some items that appear to be the same items are higher in the Jefferson Edwards estimate. For example, National Parts estimates the fog lamp at \$130.42 while Jefferson Edwards values the fog light at \$782.52. As it relates to the C&C estimate, there are estimates supplied for parts not included in either the National Parts or Jefferson Edwards estimate, for example, a windshield washer bottle at \$1,041.26 and an engine control module at \$3, 177.72. This suggests that the estimate supplied by National Parts in relation to parts might be a non-exhaustive list. No evidence has been given to account for these differences and the Court cannot speculate. The court is faced with hugely varying estimates of the cost of parts; a situation exacerbated by the failure of the claimant to produce any receipts in evidence to prove what was actually expended on parts.
- [7] In those circumstances, the only basis on which to determine this issue is the evidence from Ms. Shermer Rawlins, claims officer of the National Caribbean Insurance Company who claims 14 years' experience in the insurance industry. Ms. Rawlins provided evidence of the sums that were actually paid out via cheque to the company that repaired the vehicle, C&C Auto. According to her, the company paid out the sum of \$10, 775.07 as the cost of spare parts to C&C Auto and this figure was based on an average of the estimated costs derived from the estimates provided by Jefferson Edwards and C&C Auto. This sum is also quoted as the cost of spare parts in a demand letter of settlement which the insurance company wrote to the defendant and which is agreed by the parties. The second claimant admitted in cross-examination that the insurance company provided her with the funds to pay C&C and that the claimants received a bill from C&C that matched the sum of the cheque the insurance company issued in payment (\$16, 441.24, inclusive of spares, materials, labour, VAT on spares and materials and cost of the estimate, less deductible of \$750.00) The second claimant further stated that the parts were jointly ordered by C&C and the claimants and that C&C kept them abreast of the parts that were needed and the cost of each part. I therefore treat this sum as reflective of the cost of spares, noting that it is considerably less than the estimated cost of \$17, 426.26 contained in C&C's estimate but only fractionally above that provided by Jefferson Edwards.

- [8] The claimant further seeks to recover the sum of \$3, 196.48, claimed as “depreciation on parts”. Ms. Rawlins testified that this figure was calculated using a formula that took into account the year of manufacture of the vehicle and depreciated the value of new parts by 15 per cent for each year. She testified that the sum so arrived at is added back to the cost of spares since, in her words, “the claimant was not liable so she should receive the full total of her spares.” Ms. Rawlins stated that she maintained that position notwithstanding that the vehicle was seven years old and that age is a critical factor in determining depreciation. It is not clear why this depreciation should be a credit; this seems counter-intuitive.
- [9] For my part, I prefer and adopt the approach taken in **Kate Morris v Alpheus Anthony**,¹ as urged by learned counsel for the defendant. In that case, the court noted that the claimant’s vehicle was between 8 to 10 years old at the time of the collision. The court held that “if the claimant was compensated based on the cost of new parts for an 8 or 10 year old vehicle she would be overcompensated for her loss. The Court will therefore deduct one third of the cost of the parts from the amount to be awarded to the Claimant in damages for the repair of her motor car, because she would otherwise be compensated for the replacement cost of old parts based on the cost of new parts.”
- [10] This approach commends itself to me. In accordance with this rationale, and since there is an evidential basis for valuing the depreciation, I discount the sum of \$10, 775.07 by the sum of \$3, 196.48. Thus the sum of \$7,578.59 is awarded as damages for the cost of replacement parts for the claimants’ vehicle.

Materials

- [11] The claimants claim the sum of \$620.09 as the cost of materials used in the repair of their vehicle. This figure is based on the C&C Auto estimate. The defendant has not challenged this figure. The Jefferson Edwards estimate put this cost slightly higher at \$650.00. I award the claimants \$609.20 for costs of materials.
- [12] The total sum awarded for parts and materials is \$8, 187.79. To this must be added VAT, calculated at 17%. Accordingly, the sum of \$9, 579.71 is awarded as damages for parts and materials.

¹ ANUHCv2010/0587

Labour costs

- [13] The claimants seek to recover labour costs in the sum of \$3, 170.00 based on an average of the estimated Labour costs provided by Jefferson Edwards and C&C Auto. There is not much daylight between these two estimates and I therefore award the sum of \$3,170.00 as Labour costs.
- [14] The claimants are also entitled to recover the sum of \$150.00, representing the cost of obtaining the estimate from Jefferson Edwards. They are also entitled to recover their deductible in the sum of \$750.00 as I am satisfied on the evidence of Ms. Rawlins that these costs were incurred and paid.

Car Rental

- [15] The claimants claim the sum of US\$4, 500.00 representing the cost of rental of a vehicle for three months, at a monthly rental rate of US\$1,500.00. The claimants have exhibited a receipt from Courtesy Rent-a-Car, proving a monthly rental rate of US\$1, 500.00. Under cross-examination, the claimant attributed the delay in arrival of parts as the reason for the need to rent a vehicle for three months. It is worth remarking that Jefferson Edwards estimated 6 days for completion of repairs while C&C estimated 12 days. I take these to be references to working days. The vehicle was delivered to C&C Auto in the latter part of October or early November 2018. Allowance has to be made for the fact that the parts must first be available before repairs could commence. Even so, the evidence of the claimant is that the hood, bumper and fender were received around the middle of December 2018 since she cleared them at the port and delivered them to C&C. However, she could not remember any specific timeline with respect to when the other parts became available to C&C Auto, save to say that some of the computer and related parts caused some delay.
- [16] Mindful of the claimants' duty to mitigate their loss and taking into account the evidence that by the middle of December, 2018 some parts at least were with C&C Auto, I regard three months as an inordinate period of delay for a repair job that was estimated to take between six and twelve days. Making allowances for the delay in receiving some of the parts, I consider thirty days to be a reasonable period within which to have completed the repairs. For a period of thirty days, I award EC\$4,050.00.

- [17] Based on the foregoing, the total awarded to the claimants by way of special damages is \$17, 699.71.

Interests and costs

- [18] The claimants seek interest pursuant to section 29 of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act, Cap. 3.11. It has been said that the general principle is that interest ought only to be awarded to a claimant for being kept out of money which ought to have been paid to him: **Alphonso and others v Deodat Ramnath**². The claimants are entitled to interest on special damages, which means “the actual pecuniary loss suffered by the plaintiff, up to the date of trial, owing to the wrongful act of the defendant”: **Jefford and another v Gee**³. Interest on special damages should in principle be awarded from the date of accident to the date of judgment and is payable at a reduced rate. See **Ruth Dubois et al v Francis Maurice**⁴. This rate is calculated at half the statutory rate. See **Alphonso and others v Deodat Ramnath**. Applying these principles, the accident occurred on 10th October, 2018 and judgment given on 4th January, 2022. The statutory rate is 5% pursuant to the Judgments Act, Cap. 3.14. The claimants are therefore awarded interest on the sum of \$17, 699.71 at the rate of 2.5 % per annum from 10th October, 2018 to 3rd January, 2021.
- [19] The claimants are also entitled to prescribed costs on the full amount of the judgment (special damages plus interest on special damages) and to interest on that total award at the rate of 5% from the date of judgment until the date of payment pursuant to the Judgments Act, Cap. 3.14.

Disposition

- [20] Having regard to the foregoing, the Court hereby orders that the defendant shall pay to the claimants the following:

1. Special damages of \$17, 699.71
2. Interest on special damages at the rate of 2.5 from 10th October, 2018 to 3rd January, 2021.
3. Prescribed costs on the full amount of the judgment.

² (1997) 56 WIR 153.

³ [1970] 2 WLR 702.

⁴ SLUHCVP2013/0007.

4. Interest at the rate of 5 per cent per annum on the total amount of the award from the date of judgment to the date of payment.

Trevor M. Ward QC
High Court Judge

By the Court

Registrar