

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

GRENADA

GDAHCV2018/0097

BETWEEN:

EDLYN FRANCIS

Claimant

and

[1] ANTHONY CHASTEAU

[2] DEXTER CADOO

Defendants

Before:

Mrs. Michelle John-Theobalds

Master [Ag.]

Appearances (Via Zoom):

Mr. Alban John and Ms. Vern Ashby of counsel for the Claimant

No appearance of the Defendants

2021: March 25.

REASONS FOR DECISION

[1] **JOHN-THEOBALDS M [AG.]:** This matter came up for assessment of damages at which time I gave the decision in the matter. These are the reasons for my decision.

[2] The claimant, Ms. Edlyn Francis, is the owner of a motor vehicle registration number PAK 242. On 19th February 2016, her vehicle was parked on the left side of a minor road adjacent to the Mount Gava Development Centre in Mon Toute. While the claimant's vehicle was in a stationary position, the second named defendant, Mr. Anthony Chasteau, who was driving motor vehicle registration number PE 976, reversed the said vehicle into the front right side of

the claimant's vehicle causing damage to the claimant's vehicle. The second defendant was the servant and/or agent of the first named defendant, Mr. Dexter Cadoo.

[3] The claimant states that immediately after the accident she spoke with the second defendant at the scene and he admitted liability for the damage, but since then no attempts were made by him to compensate her for her loss. As a consequence, on 6th March 2018, the claimant issued a claim for loss and damage resulting from the accident. The second defendant failed to file an acknowledgment of service and a defence and so on 16th January 2019 judgment was entered for the claimant with damages to be assessed together with interest and costs. It is noteworthy that despite being served, the second defendant has never participated in the proceedings.

[4] At paragraph 5 of her statement of claim, the claimant sets out the particulars of negligence of the second defendant as follows:

- "a. Failing to keep a proper lookout while reversing or at all;
- b. Failing to observe the Claimant's vehicle while it was parked on a straight and unobstructed road; and
- c. Driving or reversing without due care and attention."

[5] The claimant has claimed special damages for the loss and damage which she incurred as a result of the second defendant's negligence as follows:

- "a. Cost of parts and labour to repair vehicle;
- b. Loss of use of the vehicle at the rate of \$150.00 per day for 92 days; and
- c. Excess deducted by the Claimant's insurer to settle her claim."

I will deal with each in turn.

Cost of parts and labour to repair vehicle

[6] The claimant seeks to recover the costs incurred for the parts and labour to repair her vehicle. The claimant's insurer has however repaid her these sums

and receipts evidencing these payments by the insurer have been exhibited by the claimant.

- [7] Counsel for the claimant submits that the fact that the claimant recovered payments from her insurer does not prevent her from being compensated by the second defendant. The case of **Parry v Cleaver**¹ is instructive where it was held that:

"Where the plaintiff suffers through the negligence of the defendant, the damages awarded are not to be reduced because the plaintiff has insured himself. In such a case the plaintiff is entitled to receive the amount payable by the insurer in addition to the damages recoverable from the defendant."

This principle is buttressed by the finding of the Privy Council in **Smoker v London Fire and Civil Defence Authority**² that that the non-deduction principle in **Parry v Cleaver** remains good law.

- [8] On the basis of the cases above, I am inclined to agree with the submissions of counsel for the claimant. I have no doubt that the claimant is entitled to be compensated for the costs incurred despite the fact that she may have recovered payments from her insurer.

- [9] In her statement of claim, the claimant has sought to recover the sum of \$14,137.50, representing the cost of parts and labour to repair her motor vehicle. However, the receipts exhibited total the sum of \$8,052.37. At the assessment hearing, learned counsel for the claimant acquiesced that he could not account for the sum of \$14,137.50. I therefore award the sum of \$8,052.37 under this head, in keeping with the general principle that special damages must be strictly pleaded and proved.

Loss of Use

- [10] The claimant claimed loss of use for a period of 92 days at a rate of \$150.00 per day. The accident occurred on 19th February 2016. The claimant's evidence is

¹ [1969] 1 ALL ER 555.

² [1991] 2 AC 502.

that her vehicle was relatively new as it was purchased in 2015. The parts needed for its repair were not available in Grenada and as a result the parts had to be obtained from abroad. The parts took some time to arrive in Grenada. Once the parts arrived in Grenada and the invoices were presented to the claimant, the claimant was indemnified by her insurer, Massy United in May 2016 and it was only then that her vehicle was returned to her by Jonas Browne & Hubbard. This is the basis for the claimant's claim for loss of use for 92 days.

- [11] In arriving at the rate for loss of use, learned counsel for the claimant relies on **Tropical Builders v Gloria Thomas**³ where Blenman J (as she then was) in addressing the issue of loss of use held:

“It is the law that the owner of a motor car that is damaged ... is entitled to recover for being deprived of its use during the period that he was without a motor car. 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.”

Blenman J formed the view that, in the circumstances of that case, \$150.00 per day was a reasonable amount per day for loss of use of her motor vehicle and that the claimant was entitled to receive compensation for loss of use for 73 days at this sum.

- [12] While the second defendant has not adduced any evidence refuting this amount, I am of the view that the rate of \$150.00 per day is reasonable in the circumstances of this case. I have also examined the dates on the cheques issued by the insurer for payment. I note that the cheque to cover some of the parts was made on 29th February 2016, and the cheque for the repairs were written in May 2016, some 3 months later. I therefore accept the claimant's explanation for the delay which extends the loss of use period to 92 days.

- [13] I am guided by the dicta in **Tropical Builders v Gloria Thomas** and consequently award the sum of \$13,800.00, representing the loss of use of the claimant's motor vehicle at a rate of \$150.00 per day for a total of 92 days.

³ ANUHCv228/2004 (delivered on 22nd May 2007, unreported).

Excess

- [14] The claimant also seeks to recover the excess that was deducted when her claim was settled by her insurers. Learned counsel for the claimant submits that it is settled law that a claimant is entitled to recover all losses arising from the negligence of the defendant, and that the claimant is therefore entitled to recover the out of pocket expenses that she incurred as a result of her claim being settled by her insurer.
- [15] Although the claimant did not provide any case law to support this submission, I note that in **Tedgra Mendes v Thomas Alexander**⁴ Burnett M. [Ag.] found that a sum of \$1,250.00 being the excess sum paid by the claimant to the claimant's insurer was recoverable as special damages. As in the case at bar, the excess sum was based on the contractual relationship between the claimant and the insurer and this amount was claimed as special damages.
- [16] I agree with the claimant's submissions and the observations of Burnett M. [Ag.] in **Tedgra Mendes**. It is settled that a claimant is entitled to recover all losses arising from the negligence of a defendant. This case is no different. The claimant has exhibited a receipt in the sum of \$2,750.00 which represents the amount paid to the insurers as the excess under her policy with the insurers. It is also clear from the receipts that the excess amount was not included in the payout by the insurer, therefore the issue of the claimant being doubly awarded does not arise. Taking into account the totality of the evidence presented by the claimant, I find it proper in all the circumstances to award the claimant the sum of \$ 2,750.00 for the excess amount which was deducted when her claim was settled by her insurer.

Conclusion

- [17] Damages are assessed in favor of the claimant as follows:
- (i) Special damages in the sum of \$24,602.37 broken down as follows:

⁴ GDAHCV2018/0436 (delivered on 23rd June 2020 (re-issue), unreported).

- a. \$8,052.37 for cost of parts and labour to repair vehicle
 - b. \$13,800.00 for loss of use
 - c. \$ 2,750.00 for the excess payment
- along with interest at the rate of 3% from the date of the filing of the claim to the date of judgment.
- (ii) Interest on the global sum at the rate of 6% from the date of the judgment to the date of repayment.
 - (iii) Costs to the claimant on a prescribed basis in accordance with rule 65.5 of the **Civil Procedure Rules 2000**.

[18] I am grateful to learned counsel for the claimant for their assistance.

Michelle John-Theobalds
Master [Ag.]

By the Court

Registrar