

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(Civil)**

CLAIM NO.: SLUHCV2017/0068

BETWEEN:

**HENSON HUNTE
GIDEON HUNTE**

Claimants

and

**RAYMOND JOSEPH
ALVIN ST. BRICE**

Defendants

and

**MARKENZEE HUNT
DARREN ANTOINE**

Defendants to Counterclaim

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Alvin St. Clair for the 1st Claimant

Mrs. Shervon Pierre for the 1st Defendant

Ms. Leandra Verneuil for the Defendants to the Counterclaim

2020: October 1;
October 13, 16, 21; (Written submissions)
2021: March 31.

JUDGMENT

[1] **CENAC-PHULGENCE, J:** Following a road traffic accident which occurred on the night of 19th July 2016, the claimants, Henson Hunte (“Henson”) and Gideon Hunte (“Gideon”) filed a claim against the defendants, Raymond Joseph

(“Raymond”) and Alvin St. Brice (“St. Brice”) for special damages, general damages including aggravated and exemplary damages, interest and costs.

The Claim

- [2] On the night of 19th July 2016, Henson was the driver of motor vehicle registration number PA7053, a green SUV (“the SUV”), owned by Gideon, Raymond was the driver of M1137 (“the minibus”) and St. Brice was the driver of motor vehicle registration number TX350.
- [3] The allegation is that Henson was driving behind Raymond along the Marisule road in the direction of Castries when Raymond suddenly and without notice abruptly stopped his minibus thus causing Henson to brake. Henson came to a stop without incident. However, St. Brice who was driving behind Henson negligently failed to stop and his motor vehicle collided with the SUV driven by Henson propelling it into a drain and causing damage to the SUV.
- [4] After the accident Henson alleges that he got off the SUV and approached Raymond who was seated in the minibus and attempted to speak to him when Raymond drove off. Henson demanded that Raymond stop since he was part of an accident and proceeded to stand in front of the minibus. Raymond defiantly refused to stop and proceeded to drive the minibus in Henson’s direction causing him to jump onto the minibus to avoid being hit to the ground by the moving minibus.
- [5] Instead of stopping the minibus to allow Henson to hop off, Raymond accelerated causing Henson to lose his grip on the minibus and slide beneath the minibus and be dragged for approximately 200 feet. As a result, Henson received severe burns to his skin.
- [6] It is alleged that Raymond deliberately caused trespass and negligently caused injury to Henson. Raymond purposely endangered Henson’s life such that

Henson is entitled to aggravated and exemplary damages as Raymond was aware that he was hanging onto the minibus yet continued accelerating moving the minibus forward.

- [7] The particulars of negligence alleged against Raymond are as follows:
- (i) stopping without notice or proper notice;
 - (ii) failing to stop the minibus with the knowledge that by continuing to drive the minibus forward, injury to or death of Henson was a likely possibility;
 - (iii) dragging Henson some 200 feet while persons were shouting to him to stop.
- Particulars of the injuries sustained by Henson were pleaded in the statement of claim.

- [8] Particulars of negligence were alleged against St. Brice as relates to the accident. The claimants claim special damages in the sum of \$3,589.15 in relation to medical expenses of Henson and \$1,420.00 being the cost of repairing the SUV.

Defence

- [9] Raymond's version of events of 19th July 2016 which was Carnival Tuesday is that at about 9:50 p.m. he was travelling along the Marisule Road in light to moderate traffic when the vehicle ahead of him came to an abrupt stop to allow another vehicle to make a right turn. As a result, Raymond was forced to come to a stop at which point he heard the sound of a collision and realised that there had been a collision behind him. He was in no way involved nor did he cause the collision. Raymond noticed that the SUV had collided with or been hit by one of the vehicles which was behind him and had run into the drain.
- [10] Following the accident, Raymond alleges that while he was still driving in slow moving traffic, he noticed Henson and the two other occupants of the SUV (identified as Markenzee Hunt ("Markenzee") and Darren Antoine ("Darren")) angrily approaching the minibus accusing him of stopping abruptly and causing the accident. Raymond alleges that Darren approached the minibus from the left,

Henson blocked the minibus to the front forcing him to stop and Markenzee approached the minibus from the right.

- [11] As Raymond was about to respond, Markenzee punched him in the face causing him to temporarily 'black out' and/or lose focus. Markenzee struck him a second time and as a result Raymond avers that his foot slid onto the gas pedal, causing the minibus to accelerate towards Henson who had locked the minibus from the front.
- [12] Henson attempted to jump onto the bonnet of the minibus to avoid being hit but he fell in front of the minibus and was dragged along the road. Before Raymond could regain control of the minibus, Markenzee pulled him out of the moving minibus, entered it and brought it to a stop. The defence alleges that both Markenzee and Darren proceeded to beat, punch and kick Raymond until they were stopped by another driver. The police were called and both Raymond and Henson were transported to the Victoria Hospital. Raymond relies on the Police Report to substantiate his version of the events of that night.
- [13] Raymond denies that he acted in any manner alleged by the claimants or that he negligently caused or contributed to the accident or to the injuries suffered by Henson. He denies the particulars of negligence and trespass alleged against him in the statement of claim and avers that any loss or damage suffered by Henson were caused wholly or in part by his own fault and as a result of the fault of Markenzee and Darren. The defence alleges particulars of negligence on the part of Henson, Markenzee and Darren.
- [14] Further or in the alternative, Raymond avers that Henson willingly accepted the risk of injury knowing and understanding or having ought to have known or understood the dangers which could arise from his actions and therefore he, Raymond is not liable for any of the injuries, loss or damage claimed by the

claimants. Raymond denies that the claimants are entitled to aggravated or exemplary damages or any of the relief which they seek.

Counterclaim

[15] Raymond filed a counterclaim against Henson, Markenzee and Darren alleging that their actions amounted to negligence, threats, false imprisonment, assault and/or battery, constituting trespass to Raymond. He claims damages including aggravated and exemplary damages against the claimants and Markenzee and Darren jointly and severally. Particulars of negligence, trespass to the person were detailed in relation to Henson, Markenzee and Darren.

[16] In the counterclaim, Raymond alleges that Gideon is liable for his injuries as Henson, Markenzee and Darren were at the material time using his vehicle with his permission and the acts against Raymond were sufficiently connected to their use of the SUV.

[17] Raymond avers that there was no lawful authority or justification for the use of force by Henson, Markenzee or Darren. Even if force were necessary, the force used was excessive in the circumstances.

[18] As a result of the negligence and trespass to the person by Henson, Markenzee and Darren, Raymond alleges that he suffered injuries. He relies and refers to the medical report of Dr. N. Hunter-Cole. Raymond therefore claims special damages, general damages, aggravated and exemplary damages, interest and costs.

Reply

[19] In the reply to the defence, Henson completely denies that the minibus was moving or slowly moving; that he was to blame for the injuries he sustained; that he accepted the risk of injury knowing and understanding the dangers which could have arisen from his actions. His position is that he recognised no danger as the vehicle was not moving as alleged by Raymond.

Defences to counterclaim

- [20] Henson's response to the counterclaim is that Raymond was obliged by law to remain on the scene of the accident since there was a possibility that he was responsible for the accident. He denies that he was negligent as alleged in the counterclaim. Gideon denies that he was responsible for Henson's or anyone else's actions as he was not present on the day of the incident. The claimants therefore pray that the counterclaim be dismissed against them.
- [21] Markenzee in his defence to the counterclaim admits that a vehicle collided with the back of the vehicle he was travelling in as a passenger (the SUV) and it ran into a drain as a result. He states that he called out to Raymond to stop but denies that they approached him angrily as alleged. He says it was only Henson who approached Raymond and that he Markenzee had gone to attend to the SUV in the drain.
- [22] Markenzee denies approaching the minibus from the right or punching Raymond in the face and says he has no knowledge of Raymond 'blacking out' or losing focus which caused his foot to slide onto the gas pedal causing the minibus to accelerate towards Henson as he was with Darren attending to the SUV at the time.
- [23] He says he has no knowledge of Henson jumping onto the bonnet of the minibus to avoid being hit and falling in front of the minibus and being dragged along the road. What he does assert is that Raymond revved the minibus while Henson was to the front of it attempting to have him stop the minibus.
- [24] Markenzee denies pulling Raymond from the minibus and says that he ran towards the minibus and asked Raymond to stop as he was driving over Henson but he kept on driving and he (Markenzee) tried to get him to stop. At all material times Markenzee alleges that it was Raymond who was the aggressor, negligent and caused injury to him. Markenzee denies the allegations of negligence,

trespass to the person detailed in the counterclaim and says in response that he did not obstruct Raymond's path, did not restrict his movement or threaten him as he was not near, next to or within the vicinity of Raymond as he was attending to the SUV and he never pulled Raymond out of the minibus. He also asserts that he did not use unlawful, excessive or any force against Raymond but acted in self-defence and in defence of Henson who was pinned under the minibus as a result of Raymond's actions.

[25] Markenzee completely denies Raymond's allegations of being beaten, punched and kicked. He asserts that he was more concerned about Henson's well-being and getting him out from under the bus and had no time to assault Raymond. In fact, he alleges that it was Raymond who assaulted him by punching him in the face to which he responded in kind in self-defence.

[26] He says he did not assert any harm or cause any bodily injury to Raymond and says his actions were response to being attacked by Raymond whilst he was attending to Henson who was pinned under the minibus. Markenzee therefore prays that the counterclaim against him be dismissed.

[27] Darren denies Raymond's allegations. He asserts that after the accident occurred, Henson and St. Brice stopped and got out of their vehicles. Darren alleges that after the accident, the SUV was in a ditch and he got out and went to the ditch to assess the damage to the SUV. He denies approaching Raymond or his minibus or blocking the minibus in any way. He maintains in his defence that he did not force Raymond to stop because he was by the SUV in the ditch. He denies punching or trying to punch Raymond as he was attending to the SUV in the ditch.

[28] Darren says he has no knowledge of Markenzee pulling Raymond out of the minibus but he heard Markenzee asking Raymond to stop as he was killing Henson. Darren denies the allegations of negligence and trespass alleged in the counterclaim and asserts that he did not go to Raymond's minibus, did not speak

with, make contact with or have any form of interaction whatsoever with Raymond as he was at all material times attending to the SUV in the ditch. He further asserts that he did not use unlawful force, excessive or any force against Raymond and did not inflict any harm or cause him any injury. Darren too prays that the counterclaim be dismissed against him.

Claim against Second Defendant

[29] On 7th February 2019, judgment was entered in the second claimants' favour against St. Brice by consent in relation to the claim in the sum of \$1,720.00 plus interest and costs in full and final settlement of the part of the claim relating to St. Brice.

[30] The claim therefore proceeded as between Henson and Raymond as claimant and defendant and with Henson, Markenzee and Darren as defendants to the counterclaim filed by Raymond.

Issues:

- [31] The main issues for determination are:
- (a) Whether Raymond committed assault and battery on Henson and if so, whether he used reasonable force in defence of his person.
 - (b) Whether Henson and/or Darren and/or Markenzee acted negligently.
 - (c) Whether Henson and/or Darren and/or Markenzee wrongfully imprisoned Raymond.
 - (d) Whether Henson and/or Darren and/or Markenzee assaulted and battered Raymond causing him injury and damage.
 - (e) Whether Darren and/or Mackenzee acted to defend themselves against the attack of Raymond and if so whether the force used was reasonable in the circumstances.
 - (f) What damages if any are to be awarded?

Analysis of the Evidence

- [32] The first claimant, Henson was the only witness who gave evidence in support of the claim.

Henson Hunte

- [33] Henson's evidence is that he was driving along the Marisule road heading in the direction of Castries behind Raymond's minibus when Raymond without notice abruptly stopped the minibus. As a result, he had to brake and came to a stop without incident.
- [34] However, St. Brice who was driving behind him failed to stop and collided with the SUV he was driving propelling the SUV into a drain. Henson further states that when he got out of the SUV after it had come to a stop in the drain, he approached Raymond while he was seated in the minibus and attempted to speak with him when Raymond 'made to drive off'. He says he demanded that Raymond stop as he was part of an accident and proceeded to stand in front of the minibus but Raymond said nobody would make him stop and he proceeded to drive in his direction causing him to jump onto the minibus to avoid being hit by the moving minibus.
- [35] Henson says that Raymond accelerated the minibus as he hung on which caused him to lose his grip and he slid underneath the minibus and was dragged for approximately 300 feet causing severe burns to his skin and other injuries.
- [36] Whilst the minibus was moving, Henson says Markenzee, his brother was running after it shouting to Raymond that he was killing Henson. He says when the minibus stopped, Raymond came out and rushed at Markenzee and a fight ensued. Henson says all this time he was under the minibus where he stayed for some time until the minibus was moved.

[37] Henson says that he was dragged for some 200 feet at paragraph 15 of his witness statement. He had said 300 feet in paragraph 8. He mentions that persons were shouting to Raymond to stop as someone was being dragged under his minibus.

Cross-examination

[38] Henson agreed that there are many things that would cause a driver to have to stop including if the driver in front stops. He admitted that he had to stop suddenly on the night of the incident. When asked whether he knew what was happening in front of Raymond's vehicle on the night in question, he said yes and disagreed with counsel Mrs. Shervon Pierre ("Mrs. Pierre") that he had no idea what was actually happening to the front of Raymond. He admitted he could see brake lights and that this caused him to stop.

[39] Interestingly, Henson disagreed that Raymond did nothing wrong when he stopped in front of him or that he had no reasonable justification for concluding that Raymond had done anything wrong. Yet, when asked whether Raymond's vehicle hit his, he answered in the negative. He agreed that Raymond's minibus was in no way involved in the collision. Henson disagreed with counsel's suggestion that Raymond played no part in the accident albeit he agreed that Raymond was not involved in the collision and did not hit the SUV or St. Brice. Henson tried to dodge the question as to whether it was reasonable in the circumstances to conclude that Raymond was involved in the accident and responded that that was a fifty-fifty question. However, later in cross-examination, he agreed that Raymond was not liable for the accident.

[40] Despite this exchange above, Henson then said that he felt Raymond had caused the accident. Raymond did not come out of the minibus and approach him immediately after the accident. When asked whether he approached Raymond he

initially answered 'yes, we approached Mr. Joseph' and then changed his response to 'I approached Raymond Joseph'.

[41] In cross-examination, Henson said that he was not angry about the accident but was just concerned about his and the other's wellbeing. When asked whether when he approached Raymond he was concerned about his wellbeing he answered yes. He said he was very respectful to Raymond. He was asked whether he was forceful when he made the demand for Raymond to stop and he responded that his tone was affirmative. He admitted to asking Raymond to stop and that Raymond at that point was in the minibus and he was at Raymond's door.

[42] In cross-examination, Henson appeared to be saying that the reason he stood to the front of Raymond's minibus was not to stop him as he alleged in the statement of claim but rather because he was part of an accident. Despite him alleging in his statement of claim that when he approached Raymond he 'made to drive off', in cross examination, when asked whether he agreed that Raymond was attempting to drive off, he responded that Raymond had ample time to drive off if he chose to. And then when it was suggested to him that if it was the case that Raymond was not trying to drive off then there was no need to stand in front of the minibus, he said Raymond never showed any assistance.

[43] Henson continued despite the obvious inconsistencies to insist that he had reason to stop Raymond. Mrs. Pierre put to him that he could have taken Raymond's vehicle number and vehicle type, taken a photo, got Raymond's details from the minibus association or the police, all of which he agreed with. In fact, at one point his response was 'yes, after thinking about it, yes'. This was clearly suggestive of impulsive behaviour on the night in question. The following exchange in cross examination clearly demonstrates the mindset of Henson and that he understood the implications of the actions he took:

"Mrs. Pierre: You would agree with me that standing in the path of a vehicle that was not switched off is a very bad idea?
Henson: No

Mrs. Pierre: Would you agree that had you not stood in front of Raymond's vehicle you would not have been injured?
 Henson: These are possibilities-I did not expect..
 Mrs. Pierre: You would agree that if you were not in front of Raymond's vehicle you would not have been hurt?
 Henson: You could say so"

[44] Despite all the options available to him and which he agreed with Mrs. Pierre were open to him, he made the decision to stand in front of the minibus. His response to this suggestion was that 'it was a simple matter and he thought that Raymond would co-operate'. When it was put to him that he chose to stand in front of Raymond's minibus, Henson's response was that that was the first option that he thought of again suggesting impulsive behaviour on his part.

[45] Henson insisted in cross-examination that Raymond's vehicle was not driving when he went to stand in front of his minibus but acknowledged that the minibus was on but said there was no traffic in front of the minibus. Asked whether when he approached Raymond, Markenzee and Darren came in his direction, Henson responded, 'I can take care of myself. They were taking care of the vehicle.' This seems to suggest that Markenzee and Darren did not approach Raymond with Henson. Yet, when it was put to Henson that both Markenzee and Darren were approaching Raymond, he responded that all three of them approached Raymond and that Markenzee and Darren left and went to St. Brice's vehicle.

[46] Henson denied that Raymond was punched by Darren and Markenzee and in fact he ventured to say that there was no need to punch Raymond because he was an innocent man.

[47] Although Henson did not mention any fight between Raymond and Markenzee before, in cross-examination, Mrs. Pierre asked him whether he was focused enough to see what was going on. His responses were to the effect that he knew it was Markenzee running because he could hear his voice and that he knew that Raymond had alighted the minibus because he could see the foot of someone

getting off the minibus. He agreed with Mrs. Pierre that he perceived that Markenzee was running and did not actually see him running. Henson insisted that he was conscious when asked whether he saw Raymond come off the minibus and that he did see this. He also said that he saw Raymond rush to Markenzee and a fight ensued.

[48] At paragraph 9 of his witness statement, Henson said that Raymond rushed to Markenzee and a fight ensued but in cross-examination he seemed to be saying he saw the fight and also that he could not see the fight but he knew there was a fight happening. When challenged by Mrs. Pierre that from his position under the bus, he could not see anything, Henson's response was that his senses were working, he could see and hear. At best, Henson's responses to this line of questioning was evasive and a little unbelievable that from where he was under the minibus he was able to actually see the fight. He may have assumed what was happening, but I highly doubt that he saw the fight or Raymond rush towards Markenzee.

[49] Henson in cross-examination agreed that both Markenzee and Darren came to his aid but that Markenzee came first. He claimed that Raymond exited the vehicle and attacked Markenzee. He also said that whilst Markenzee was attending to him, Raymond was in the minibus which suggests that it was after Markenzee attended to him that Raymond exited the minibus and started the fight. He agreed that Darren attempted to remove the vehicle from his body but at the time this happened, Raymond was not in the minibus.

[50] The evidence for the first defendant was given by Mr. Raymond Joseph and Ms. Rose Leonce.

Raymond Joseph

[51] Raymond was the driver of the minibus on the night of the incident. He is the owner of a route band permit for the Gros Islet (1A) Route. At about 9:50 p.m. on

Carnival Tuesday, 19th July 2016, Raymond says he was driving in the vicinity of Marisule accompanied by his girlfriend, Rose Leonce ("Rose") who was seated next to him in the passenger seat.

- [52] Raymond's evidence is that they were driving in light to moderate traffic when the vehicle ahead of him abruptly came to stop to allow another vehicle to turn into a junction, causing him to brake and come to a stop. A few seconds later he heard screeching of tyres and a loud bang and saw a green SUV passing on the left rolling across a gutter off the pitched surface of the road. He says he realised there was a collision somewhere behind him but he was not involved in the collision at all.
- [53] Raymond says both he and Rose looked back to see whether anyone had been injured but then the traffic ahead started moving and so he moved forward as well. While he was driving slowly in the traffic, he says he noticed the three occupants of the SUV coming in his direction shouting angrily accusing him of causing the accident.
- [54] Raymond says that Darren proceeded to the front left of the minibus and Henson to the front right. Both men placed their hands on the windscreen, and he was forced to stop the minibus. He says he felt threatened.
- [55] He says he could hear the men saying that they were stopping him as he had caused the accident and all three men were being very rowdy. He says Markenzee then came around to his window and yelled that he had caused the accident. Raymond says he was quite confused and responded asking how had he caused the accident. He says he then felt a blow to the right side of his face near his eye and he momentarily 'blacked out'. Markenzee, he says threw another punch and his entire body flew to the left and he felt a sharp pain to the left side of his head and eye.

[56] Raymond says his foot slid off the pedal accelerating the vehicle. Fearing for his life and his safety, he says he took control of the minibus and continued pressing on the gas pedal in an attempt to escape the men. Henson he says jumped onto the minibus in an attempt to stop him but fell off. He says Rose told him to stop as she noticed that Henson may have fallen into the minibus' path. However, according to Raymond, before he could stop the minibus, one of the other men opened the moving vehicle and stopped it.

[57] When the minibus came to a stop, Raymond says Darren and Markenzee pulled him out of the vehicle and began to violently beat him about his body until he lost consciousness. He says he was in and out of consciousness as they continued beating him. He was transported to the Victoria Hospital in another minibus.

[58] Raymond says his actions were necessary to avoid further attack by the men and to protect himself from bodily harm and/or loss of life.

Cross-examination:

[59] In cross-examination, counsel for the first claimant, Mr. Alvin St. Clair ("Mr. St. Clair") spent time questioning Raymond about his apparent decision to accelerate even if he knew that Henson was at the front of the minibus.

[60] Mr. St. Clair asked Raymond whether when he accelerated onto Henson, he was in an unconscious state or he was not aware and did it accidentally to which Raymond responded no and that it was when he got the first blow that he accelerated to move. Mr. St. Clair then put it to Raymond that it was not a situation of his foot pressing on the accelerator involuntarily but that he made a decision to do so to which Raymond's response was that he pressed it because he was in danger. He also said in cross-examination that when he accelerated, he knew Henson was standing to the front of the minibus. When asked whether knowing where Henson was, he attempted to steer away from him, Raymond responded that he was being hit in his head and he was trying to get away.

- [61] Mr. St. Clair directed Raymond's attention to paragraph 11 of his amended defence where he averred that because he was being punched, his foot accidentally slid on the gas pedal with which Raymond agreed. When it was put to him that he had decided to press the accelerator, Raymond said 'no'. Directed to paragraphs 18 and 19 of his witness statement, Mr. St. Clair asked Raymond whether what he was saying was that he made the decision not only to press the accelerator but to take control of the steering wheel and steer in into Henson. Raymond answered, "yes, because I was getting blows and I wanted to get out of there."
- [62] Raymond maintained that he was hit when it was suggested to him that he was never hit and that he decided to press the accelerator. Mr. St. Clair pointed to paragraph 12 of the amended defence where it states 'the first claimant did attempt to jump onto the bonnet of the omnibus to avoid being hit...' and paragraph 20 of the Raymond's witness statement where he stated 'Henson Hunte jumped onto the omnibus in an attempt to stop me from driving off ...' and suggested to Raymond that Henson jumping to stop the vehicle and him jumping to avoid being hit were two different things. Raymond said he disagreed.
- [63] In cross-examination, Mr. Clair asked Raymond whether he blacked out before he hit Henson to which Raymond responded that when the guys started to hit him, he blacked out and when the police came on the scene, they called out to him. When asked at what point he was unconscious, Raymond responded that it was when he received the two punches to his head and before he hit Henson. Whilst this evidence may seem contradictory, it is clear that Raymond was speaking of two different times. It is clear from his witness statement and defence that when he was initially punched he 'blacked out' which I understand to be akin to being destabilised or losing focus momentarily. His statement at paragraph 21 of the witness statement of losing consciousness clearly relates to after he had hit

Henson and when he says he was pulled out of the vehicle by Darren and Markenzee.

- [64] Raymond maintained in cross-examination that he was scared and not angry. He denied counsel's suggestions that the reason he drove off was because no one was going to stop him, and that Henson had no choice but to jump on the vehicle and that he moved forward and hit Henson. Raymond also denied Mr. St. Clair's suggestion that the altercation took place only when he came out of the minibus.
- [65] Ms. Leandra Verneuil, counsel for the Markenzee and Darren questioned Raymond as to why he did not attempt to roll up the windows when he was being approached by the three men and he responded that he did not have time to. He maintained that everything happened so fast. Again, Raymond insisted that he was trying to escape when he drove off and hit Henson. In relation to who punched him through the window of the minibus, Raymond was clear that Darren did not punch him. He also said that when his girlfriend, Rose told him to stop, he did not stop and that it was at that point that someone pulled him out of the minibus. He agreed that it was Markenzee. Raymond said he would not have continued to drive if they were not hitting him. He insisted that he did not hit anyone and questioned why he would try to fight with these young guys.

Rose Leonce

- [66] Rose is Raymond's partner of eighteen years who was in the minibus on the night of the incident. Her evidence is that as they approached near Top of the World, Raymond came to a stop as the vehicle in front of them had stopped abruptly to allow a vehicle to turn right. Moments later, Rose like Raymond says she heard a loud bang and saw a green SUV fly past on the left and land in the gutter. She says she and Raymond looked back to see what had happened and at the same time the traffic ahead began to move so Raymond slowly moved forward. She then noticed the occupants of the SUV coming out and they started quarrelling and heading in their direction. Rose says she could hear them accusing Raymond of causing the accident and she says she felt threatened.

- [67] She describes the occupants of the SUV as being all of medium build. She says Henson stood to the front right of the minibus, Darren to the front left and Raymond had no choice but to apply brakes. Markenzee initially stood near her window but then he proceeded to Raymond's window. She says she was afraid.
- [68] Markenzee she says continued shouting and accusing Raymond of causing the accident and was very loud and aggressive. Before Raymond could respond, she says Markenzee punched Raymond in the right temple and his head flew in her direction and he appeared disoriented. Before she could do anything, Markenzee threw a second punch and the vehicle jolted forward. She says at that point, Raymond managed to take control of the steering wheel and tried to escape the attack. Henson who was still to the front jumped on to the windscreen and as the vehicle moved forward, he fell to the side.
- [69] Rose says the other two men, Darren and Markenzee began shouting and Markenzee managed to jump onto the minibus and attempted to switch it off; it veered off the road and then came to a stop. Markenzee and Darren she says angrily dragged Raymond from the bus and began punching him until he lost consciousness. Rose says she was yelling at the men to stop beating Raymond. She says she feared that they would kill Raymond and struggled to pull them away from him, but she was no match for them. She says the men eventually stopped as persons arrived and intervened and then the police arrived.
- [70] Rose says at no time during the incident did Raymond hit any of the men and that he had no opportunity to defend himself.

Cross-examination:

- [71] Rose said in cross-examination that it was only one person who punched Raymond before he was pulled out of the minibus. She agreed that Raymond was not pulled out of the minibus when it was moving but when it had stopped which is

consistent with evidence given by Markenzie that Raymond stopped the minibus after persons yelled to him to stop and Henson had slid under the minibus. When it was put to Rose that she never said in her evidence in chief that Raymond threw any punches, she replied 'no, but it was obvious-he would not stay there and let them beat him up.'

[72] Counsel, Mr. St. Clair attempted to point to what he said was an inconsistency in Rose's evidence where earlier in cross-examination, she had said that the vehicle was already moving when Henson jumped in front of it but at paragraph 20 of her witness statement, she appeared to be saying that Henson was already at the front of the vehicle when the vehicle moved forward. However, it clear that these two accounts relate to two different time periods in the incident time span. The first being when Henson first went in front of the vehicle and the second when the vehicle moved forward and hit him and are not contradictory at all.

[73] Again, counsel attempted to suggest that Rose's evidence was inconsistent as relates to when Henson actually went to the front of the bus. While it all appeared to be confusing, a close analysis of the evidence shows that it is clear. At first, Henson went to the front of the bus whilst Markenzee went to Raymond's window. That resulted in the minibus having to stop. Rose's account that it was after the second punch was thrown that Henson jumped and blocked the bus to my mind clearly refers to when Raymond says he lost focus after being punched and as a result the vehicle accelerated and then he took control of the steering wheel and continued the acceleration. It was at that point that Henson would have jumped onto the minibus which is what I believe Rose was referring to in her account. Two separate time periods are being referred to.

Markenzee Hunt

[74] Markenzee is Henson's brother. His evidence is that he was a front seat passenger in the SUV the night of the accident. He recounts that the minibus in

front of them stopped suddenly and the motor vehicle at their back collided with them causing the SUV to skid along the road and land in a drain.

- [75] He says they all came out of the vehicle and Henson asked whether they were alright. Henson yelled to the driver to stop and wait for the police. He says he was still feeling dazed and trying to compose himself. He checked the damage to the SUV and then walked towards the motor vehicle that had hit the SUV. He says he heard the driver telling Henson using expletives that nobody would make him stop and to move from the front of his minibus.
- [76] Markenzee says he then heard the vehicle accelerate and turned around and did not see Henson. He says he saw the minibus moving and Darren was asking for Henson so he ran to the minibus and realised that Henson was still in front of the minibus. He says he shouted to Raymond to stop and also heard a lady in the minibus yell stop. He says Raymond then stopped the minibus.
- [77] Markenzee says he ran across to Henson and saw the tyre on him and blood. While he was attending to Henson, he says he felt two knocks on his head and it was then he turned and punched Raymond back and a scuffle ensued. He says he went to the hospital with Henson.

Cross-examination:

- [78] When asked whether he would agree that Raymond played no part in the accident, Markenzee responded, 'we all played a part' referring to the fact that Raymond had abruptly stopped his vehicle. He agreed with Mrs. Pierre that if a vehicle stops abruptly in front, then you may have to stop abruptly as well. He also admitted that he was not aware whether Raymond had done anything wrong. He said that it was Henson who went towards Raymond whilst he and Darren were checking on the SUV in the drain. He agreed that Raymond did not exit the minibus when Henson went to him and that the minibus was on the main road, it had not pulled over and it was turned on.

[79] When asked how he knew Raymond wanted to leave the scene, Markenzee responded that he was there and Raymond was trying to leave. Asked whether Raymond was moving, he said he was moving forward a little bit. This is after he had just said that the vehicle had stopped when he was asked whether the vehicle was moving. Interestingly, Markenzee said in cross-examination that it was Raymond that caused the accident. Mrs. Pierre therefore questioned Markenzee as to why he had stopped Raymond and he reminded that he had not stopped Raymond. Asked why Henson would have had reason to stop Raymond if he did not cause the accident, Markenzee responded that Henson had a reason and went on to say he was not the driver.

[80] Markenzee then questioned why he should blame Raymond for the accident. He maintained that he did not go over to Raymond and that he never punched him. Markenzee insisted that when Henson was yelling to Raymond to stop, he and Darren were walking towards St. Brice's vehicle which had caused the accident but he agreed with counsel that he had never stated that in his defence. In fact, in nearly all of his responses to the allegations made by Raymond, the response was that he was attending to the jeep in the ditch. When Mrs. Pierre suggested to Markenzee that it would have been better for Henson to take the number plate of the minibus, he responded that there was no time to do that and questioned with what would he have done it.

[81] Markenzee said when they came from St. Brice's vehicle, they went to the back of the minibus. Mrs. Pierre suggested to Markenzee that at the time Raymond ran into Henson he was nowhere near the minibus, to which he responded that he could not put everything in his statement. He admitted to not having stated this in his statement. When asked whether none of them thought of simply taking the registration number of the vehicle, Markenzie said he did not think of that at the time. Markenzee did not agree with Mrs. Pierre that there were many options in terms of identifying the person who may have caused the accident as he said they did not know what was going to happen.

- [82] Asked whether he was close to the minibus when it drove into Henson, Markenzee said he was not close and was a distance away from the back of the bus. Asked whether when Rose yelled to Raymond to stop, he stopped, Markenzee said that is not what happened. Despite him saying at paragraph 8 of his witness statement, that when Rose yelled Raymond stopped, Markenzee said in cross-examination, he guessed Raymond stopped the bus, but that Rose was shouting stop for the longest while. Markenzee denied that Raymond was pulled out of the minibus.
- [83] Mrs. Pierre drew Markenzee's attention to his defence where he had stated that Raymond came out of the bus while he was attending to Henson and punched him in the face and he responded that he was punched in his head and then he said 'face, head-it's all part of my head.' In re-examination, Markenzee was clear that Raymond was in his vehicle whilst he was attending to Henson.

Darren Antoine

- [84] Darren is a friend of the Hunte brothers, Henson and Markenzee. His evidence is that he was a back seat passenger in the SUV at the time of the accident. He recounts like the others that while driving towards Castries, the minibus suddenly stopped in front of the SUV and then a loud noise was heard and the motor vehicle at their back hit the back of the SUV. He too says that the SUV came to a stop in a ditch a few feet in front of the minibus.
- [85] Darren says all the occupants came out of the SUV and checked on each other. Then Henson walked towards the minibus. He says he and Markenzee went to speak to St Brice who was the driver of the motor vehicle that had hit the SUV and to see the damage.
- [86] He says he heard Henson telling Raymond to stop, that he had caused an accident and should wait for the police. He says he heard Raymond cursing, but he did not hear clearly what he was saying.

[87] He says he heard the minibus accelerate and he asked Markenzee for Henson and they started running towards the minibus. He says he saw Henson bleeding from the mouth and the minibus appeared to be over Henson's stomach area. Darren says he entered the minibus to try to remove it over Henson but he could not. He says Raymond was not in the bus at that point.

[88] Darren's evidence is that he begged persons around to assist and some persons came and physically lifted the minibus off Henson and someone called the ambulance. When the ambulance arrived, Markenzee accompanied Henson to the hospital whilst he stayed behind to assist the police.

Cross-examination

[89] Darren like Markenzie insisted that when Henson approached Raymond, he was by the SUV in the ditch and then he moved to St. Brice's vehicle; he never stopped by Raymond's vehicle. Mrs. Pierre pointed out to Darren that his defence to all the allegations made by Raymond was that he was at all times by the SUV in the ditch to which Darren said 'well, not at all times.' It was also pointed out to him that nowhere in his defence did he say he went to St. Brice's vehicle. Darren confirmed that at the time Henson was demanding that Raymond stop, Raymond was still in the minibus and never came out of the vehicle at that point.

[90] Darren's evidence in cross-examination about where he actually was when Henson approached Raymond and demanded that he stop was a bit unclear. He said that he heard Henson make the demand while they were by the SUV in the ditch and then as they moved the St. Brice's vehicle, what was being said was not so clear.

[91] Darren agreed that according to Markenzie's version of events, after Raymond ran over Henson, he remained in the minibus and that someone jumped into the minibus but it was not Darren. Mrs. Pierre pointed Darren to paragraph 9 of his

witness statement where he relayed what happened after Henson had been struck by the minibus and said, 'I entered the bus to remove it from Henson but I could not. The driver was not in the bus.' Darren insisted that this was a different timeline. But that is quite confusing as Markenzie's evidence was that after Raymond hit Henson, he remained in the minibus.

- [92] Darren agreed that there were other options which Henson could have exercised rather than standing in front of the minibus and that it was not wise for Henson to have done so. He denied touching Raymond at all. He never once spoke in his evidence in chief or cross-examination about this fight which was supposedly instigated by Raymond.

Inconsistencies and Credibility

- [93] Counsel, Mr. St. Clair submits that Henson's version of the facts is the most credible but he admits that he was unable to give the full details of the facts as he was for a considerable period under the bus at a time when a major part of the events unfolded and was unable to assist as much as he could have if he had not been in that position. He therefore urges that given the inconsistencies and contradictions of the 1st defendant's version of events on his pleadings and as given by him and his witness, it cannot be accepted as the truth of what occurred. He also admits that there are omissions in the evidence of the defendants to the counterclaim which requires 'some adjustments to accurately reflect the truth.'
- [94] Mrs. Pierre submitted that there appeared to be inconsistency in Raymond's and Rose's evidence in relation to who punched Raymond first, from what direction and how many times and whether he was pulled out of the bus before or after it had come to a stop. But Mrs. Pierre urged 'no person, in the midst of a heart-pounding physical attack will carefully count the number of punches, the directions from which each came, from which one of the multiple attackers they came and when each part of the incident occurred.' She also pointed out that this is so especially four years post the incident and the evident struggle which

Raymond and Rose had in identifying Darren and Markenzee who have a similar build and who Raymond maintained were the main attackers. She submitted that their confusion was understandable and says on the whole, Raymond's and Rose's evidence was quite consistent and they were almost naively honest and forthright with the Court.

[95] Ms. Verneuil on behalf of Darren and Markenzee urged that Darren was truthful throughout his evidence and that Markenzee was terrified and trembled with fear and not because of the cold room.

[96] In a case such as this, which is highly fact-sensitive and where there are material differences/omissions in the parties' evidence, a strong factor that will weigh heavily in the court's assessment of the evidence and final decision as to which version of events is to be preferred is the apparent credibility of the witnesses. With that said, I recognize that the Court must approach the matter of credibility with caution.

[97] In this regard, I heed the words of Lord Pearce in the House of Lords in **Onassis v Vergottis**¹ who offered this compelling guidance on assessing witness credibility:

“‘Credibility’ involves wider problems than mere ‘demeanor’ which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following problems. First, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person, telling something less than the truth on this issue, or, though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, **did he register the intentions of the conversation correctly and, if so, has his memory correctly retained them?** Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over-much discussion of it with others? **Witnesses, especially those who are emotional, who think that they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases that, with every day that passes, the memory becomes fainter and the imagination becomes more active.** For that reason, a witness, however honest, rarely persuades a Judge that his present recollection is preferable to that which

¹ [1968] 2 Lloyd's Rep. 403 at p.431.

was taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance. And lastly, although the honest witness believes he heard or saw this or that, is it so improbable that it is on balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness. And motive is one aspect of probability. All these problems compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process.” (my emphasis)

[98] Having carefully considered the issue of credibility in assessing the evidence presented, and in view of the inconsistencies and discrepancies in the evidence of the first claimant and the defendants to the counterclaim and their demeanour, I have on a balance of probabilities resolved the matter in favour of Raymond. I find that though there appeared to be inconsistencies in the evidence of the first defendant, it was very clear to me that Raymond and Rose were far from articulate and at times were struggling to comprehend some of the questions. Some of the inconsistencies for example how many punches were thrown at Raymond are not so significant when assessed taking into account the totality of all the evidence. I however found Raymond and Rose to be credible and forthright witnesses. I find that Henson, Darren and Markenzee were very eager to ensure that they appeared calm at trial and they all agreed that Raymond had no part to play in the accident and therefore could not justify why Raymond needed to have been stopped in the first place. Whilst I do recognise that Markenzee said that he was cold which may have been responsible for his constant fidgeting, his demeanour was far from calm. He was also very evasive with his responses. I find it necessary to highlight only a few of the inconsistencies on the evidence of the first claimant and the defendants to the counterclaim:

- (a) Henson in his evidence said that at the time Markenzee was attending to him, Raymond was in the minibus. On the other hand, Markenzee in his evidence said that while he was attending to Henson, Raymond punched him and a scuffle ensued which suggests that Raymond was not in the minibus at that time. The accounts just do not support each other.

- (b) Henson says the minibus was not moving when he went to the front of it to get the driver to stop. More so, in the statement of claim, it stated that Henson attempted to speak to Raymond when he made to drive off which implies that the minibus was moving when he demanded that Raymond stop. The question is why would there have been a need to go to the front of the bus to try to get the driver to stop or to demand that he stop if the minibus was stationary.
- (c) Darren and Markenzee's evidence about where they were during the incident. They both suggested in their defences that they were attending to the SUV in the ditch but then in cross-examination suddenly introduced that they had gone to St. Brice's vehicle. That is material especially when Raymond says they were by his minibus and that Markenzee in particular came to his window.

Discussion

- [99] Whilst the first claimant pleaded negligence, this seemed to have been abandoned in the pre-trial memorandum and only the issues of assault and battery were raised.

(a) Whether Raymond committed assault and battery on Henson and if so, whether he used reasonable force in defence of his person.

- [100] Simply put 'an assault is a direct threat made by the defendant to the claimant, the effect of which is to put the latter in reasonable fear or apprehension of immediate physical contact with his person.'² Battery on the hand is defined as 'a direct act of the defendant which has the effect of causing contact with the body of the claimant without the latter's consent.'³

- [101] For there to be battery there must be an intentional act on the defendant's part. It is not necessary that there should be bodily contact between the defendant and

² Commonwealth Caribbean Tort Law, 5th edition, at page 12.

³ Commonwealth Caribbean Tort Law, 5th edition at page 13.

claimant and it is sufficient if the defendant brings some material object into contact with the claimant's person.

[102] Whilst it may appear to be apparent from even Raymond's evidence that there was a battery committed upon Henson, it is important to assess the entire factual matrix. Having accepted the version of events as given by Raymond, it appears that at the time when the minibus moved forward, Raymond had been punched and according to him, he lost focus and this caused his foot to slide onto the gas pedal thereby causing Henson to attempt to move out of the way of the moving minibus by jumping onto the bonnet of the minibus. This is perfectly understandable especially if one is hit in the face as this could destabilise one. I therefore find that Raymond did not intentionally drive the minibus towards Henson and therefore he did not commit any battery at that point.

[103] Raymond did admit that after he was punched and the minibus moved forward involuntarily he decided to 'take control of the steering wheel' to get away from the scene as he thought that was his best option. He would have known that Henson was at the front of the minibus and did say that Henson attempted to jump on but fell in front of the bus. Whilst it may appear that at that point Raymond intentionally drove knowing that Henson was to the front of the bus and would have been committed battery against Henson, one must appreciate the circumstances.

[104] It was after 10:00 p.m. Raymond was approached by three strapping young men. He knew he was not involved in the accident so what possibly could they have wanted with him. Having been punched, it would not be unreasonable for Raymond to try to flee and escape and his actions showed that his only thought was to escape the situation. Both he and Rose testified to being scared. Raymond was therefore acting in full self-defence mode as he tried to get away. Any reasonable right-thinking person at that hour of the night would have been

contemplating how they could get away from an environment which clearly seemed hostile.

[105] I am of the view and I find on the evidence that the only reason Henson went to stand in front of the minibus was to stop Raymond from leaving and that given the close relations between the three men and the fact that they all indicated that they would look out for each other, that Darren and Markenzee would have been close by. I do not accept the story that they went to see St. Clair's vehicle at all which is why it never featured in their evidence in chief. They went to Raymond because in their minds he had caused the accident.

[106] Henson made a choice to position himself in front of a minibus whose engine was switched on, driver was at the wheel and he says he did it to prevent Raymond from leaving the scene. It is unclear why there was a need to do so when all three men, Henson, Darren and Markenzie admitted that Raymond had done nothing wrong and had not caused the accident. Henson admitted that there were other ways that he could have dealt with Raymond if indeed he thought that Raymond was involved in the accident as he said although they all sang the same tune, that Raymond was not at fault. Henson admitted that he could have taken the registration number of the minibus, called the police or taken a photo of the minibus all of which he said he did not think of at the time.

[107] There was absolutely no reason for Henson to have positioned himself in front of the minibus to stop it and he therefore put himself in harm's way and in so doing exposed himself to the foreseeable risk that the minibus may drive forward. In fact, in evidence, Henson admitted that Raymond had nowhere to move but forward which is what eventually happened. Further Henson did not attempt to jump out of the path of the minibus but onto the minibus. It is well-known that minibuses do not have large bonnets and to even think that that was an option is assuming a huge risk.

[108] Given all the circumstances of this particular case, it cannot be said that Raymond is liable for any of the injuries caused to Henson as the events which led to his injuries were brought on solely by himself and Darren and Mackenzie and their impulsive and aggressive behaviour and poor judgment on that night. Henson acted without considering who really caused the accident. I find on a balance of probabilities that Raymond is not liable for assault or battery and therefore is not responsible for any of the injuries suffered by Henson. I would therefore dismiss the 1st claimant's claim with prescribed costs to be paid to the 1st defendant in the sum of \$538.37.

(b) Whether Henson and/or Darren and/or Mackenzie wrongfully imprisoned Raymond

[109] Raymond in his counterclaim asserts that the actions of Henson, Darren and Mackenzie amounted to false imprisonment. False imprisonment is defined as the unlawful imposition of restraint on another's freedom of movement from a particular place.⁴ The elements of the tort are (a) the fact of imprisonment meaning any form of physical restraint and (b) absence of lawful authority to justify that imprisonment. The restraint may take the form of actual physical force but it can also be apprehension of such force.

[110] The evidence as accepted from Raymond reveals that Henson, Darren and Mackenzie approached the minibus, Henson and Darren to the front and Mackenzie at Raymond's window. According to Raymond, he was forced to stop the minibus because of their actions. All three men admitted in cross-examination and agreed that Raymond was not involved in the accident and that he had not caused the accident although the reason advanced on the pleadings for approaching him was because he was involved in an accident and was about to leave the scene. It is clear on the evidence that there was no lawful justification for Henson to stand in front of the minibus to stop it and prevent Raymond from leaving the scene.

⁴ Collins v Wilcock [1984] 1 WLR 1172 at 1178.

- [111] Raymond admits to feeling scared. When asked whether Raymond could have gone anywhere with him standing to the front of the vehicle, Henson said yes but that was after he admitted that to the right side of the minibus was the northbound lane and to the right was a gutter. It was clear from his evidence though that the purpose for standing to the front of the minibus was to prevent Raymond from leaving the scene. It is the case that whilst Henson said that Raymond could have gone, the means of escape from the restraint must be reasonable. It would not be reasonable if it exposed Raymond to danger to life and limb. With Markenzee at his door throwing punches and Henson standing to the front of the minibus it is clear that Raymond was not free to leave the area more so because to simply choose to do would have consequences.
- [112] I therefore find on a balance of probabilities that Raymond was falsely imprisoned by the Henson, Darren and Markenzie.

- (c) Whether Henson and/or Darren and/or Markenzee assaulted and battered Raymond causing him injury and damage.**
- (d) Whether Darren and/or Mackenzie acted to defend themselves against the attack of Raymond and if so whether the force used was reasonable in the circumstances.**

[113] On the evidence, I do not find on a balance of probabilities that Henson or Darren is liable for assault or battery upon Raymond. I believe both of them that they never touched or punched Raymond. I am of the view however, after reviewing the evidence and assessing the witnesses that Markenzee was the aggressor on the night in question and that he punched Raymond whilst he was in the bus. I am also of the view looking at all the evidence, that having realised that Raymond moved forward and that Henson was injured, Markenzie was angry and proceeded to get Raymond out of the minibus and continued striking and beating him. It is clear from the evidence that Raymond was in the bus when Markenzee went to check on Henson which means that the minibus was stopped by then. I do not believe that Raymond would have come out of the minibus given all that had transpired and his own evidence and that of Rose that they were both scared.

[114] I therefore find on a balance of probabilities that Markenzie is liable for the injuries sustained by Raymond as a result of the assault and battery.

- (e) Whether Henson and/or Darren and/or Markenzee acted negligently and caused Raymond's injuries.**

[115] The particulars of negligence are set out in the amended counterclaim. However, counsel for Raymond did not specifically address this issue on the submissions. In any event, on the evidence, Raymond has to show that but for Henson, Darren and Markenzie obstructing the path of his vehicle, he would not have suffered the injuries which he did. There is no correlation between the obstructing of Raymond's minibus and the injuries which he alleges he suffered. I therefore find that there is no liability in negligence and in any event, the more appropriate cause of action, trespass to the person has been addressed.

(f) Measure of damages

(i) False Imprisonment

- [116] On the finding of liability against Henson, Markenzee and Darren in relation to false imprisonment, the period of restraint was not very long, Raymond did not suffer any physical injury resulting from the detention nor did he give any evidence of any injury to his feelings or reputation. In the circumstances, the first claimant, Henson, and the defendants to the counterclaim, Markenzee and Darren are to pay the sum of \$1,000.00 jointly and severally as compensatory damages to Raymond for false imprisonment with prescribed costs of \$150.00.

(ii) Assault and Battery

- [117] In relation to the finding of liability for assault and battery made against Markenzee, the first defendant to the counterclaim, the Court must have regard to Raymond's evidence as relates to his injuries.
- [118] Raymond in his witness statement says that as a result of the beating which he suffered, he was in and out of consciousness. He recalls being transported to Victoria Hospital and being examined by Dr. Nicole Hunter-Cole and produces a medical report from the said doctor dated 10th August 2016. The medical report details findings as relates to an examination carried out on Raymond on the night of the incident. The report mentions Raymond suffering injuries to his face associated with loss of consciousness and vomiting. His blood pressure and blood sugar were elevated. The report states that he was conscious and alert with absent neurological deficit. There were mildly tender swollen areas to his right cheek and left pinna⁵ and a 1 cm wound was present behind the left ear.
- [119] The report indicated that an assessment of head injury was done and initial treatment given in the Emergency Room and he was referred for further management.

⁵ External part of the ear.

[120] Raymond produces receipts totalling \$360.00 for the costs of laboratory tests and x-ray, medical report and traffic accident report. None of these have been challenged and are awarded. Raymond also claimed the sum of \$20.00 for emergency consultation at the hospital but produced no receipt. It must be remembered that special damages are awarded to cover out of pocket expenses which have been incurred and there must therefore be proof of such expenses.

[121] Raymond says in his evidence that as a result of the assault he suffered from severe body pains for about two weeks during which time he could not work. He claims the sum of \$250.00 daily for that period as he was unable to work. He produced no medical evidence to support. He also says that he continued to suffer from moderate body pain for about a month after the incident, again with no medical evidence to support or to show how that impacted his ability to function and work. He also said he suffered from headaches for several months after the incident and managed it with over the counter medications.

[122] Raymond's evidence does not assist the Court in its assessment of general damages. Raymond's injuries appeared to be mild injuries and there is no evidence of any resulting disability, loss of amenities, loss of earnings to assist with this exercise. The only award possible would be an award for pain and suffering in the nominal sum of \$1,000.00.

[123] The total award for assault and battery would be \$1,360.00 to be paid by Markenzee to Raymond with prescribed costs of \$204.00.

(iii) Whether Raymond is entitled to aggravated and exemplary damages

[124] In his amended counterclaim, Raymond claims aggravated and exemplary damages. These categories of damages were addressed in the well-known case of **Rookes v Barnard et al.**⁶ The normal practice is to award one figure as general damages and in so doing account is taken of the aggravating features.

⁶ [1964] AC 1129 at 1221.

- [125] A defendant's motives, conduct or manner of inflicting the injury may have aggravated the claimant's damage by injuring his proper feelings of dignity and pride which could lead to an award of additional damages called 'aggravated damages', to compensate for this. As was stated in **Rookes v Barnard**, 'a judge can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride.'
- [126] As to exemplary damages, these may be awarded in an action for trespass to the person where the trespass falls within one of the three categories in which such damages are generally available. The three categories were identified in **Rookes v Barnard** as (a) oppressive, arbitrary or unconstitutional actions by the servants of the government; (b) where the defendant's conduct was 'calculated' to make a profit for himself; (3) any category in which exemplary damages are expressly authorised by statute.
- [127] In the context of this case, exemplary damages are not appropriate and neither the pleadings nor the evidence justify such an award. The circumstances and the evidence do not fall in any of the three categories outlined in **Rookes v Barnard**.
- [128] In relation to aggravated damages, the pleadings do not speak to any injury to Raymond's dignity or reputation because of the conduct of the Henson, Markenzee and Darren. It was only in the submissions that counsel spoke to Raymond being confronted, attacked and humiliated in the presence of his girlfriend. Whilst I agree that the behaviour of the Henson, Darren and Markenzee on that night was totally uncalled for, I am not of the view that it was borne out of malevolence or spite but more as a result of their impulsive reactions. I am certain in hindsight they would agree that their response to this incident was totally out of proportion and indeed they all agreed that other options could have exercised. I

am therefore of the view that an award of aggravated damages would not be appropriate in the circumstances of this case.

Order

[129] In light of the foregoing discussion and the findings, having taken all the evidence into consideration, I make the following orders:

- (1) The first claimant's claim is dismissed with prescribed costs to the 1st defendant in the sum of \$538.37.
- (2) Judgment is entered against the first claimant and the first and second defendants to the counterclaim in relation to the claim for false imprisonment in favour of the first defendant in the sum of \$1,000.00 with prescribed costs of \$150.00.
- (3) Judgment is entered against the first defendant to the counterclaim only in relation to the claim for assault and battery in favour of the 1st defendant in the sum of \$1,360.00 with prescribed costs of \$204.00.
- (4) No award is made in relation to the claim for exemplary or aggravated damages.

Conclusion

[130] This was a rather unfortunate incident which, in my view, could have been avoided had the 1st claimant and the defendants to the counterclaim simply exercised restraint and not acted impulsively especially when it was clear that the 1st defendant was not involved in the collision at all. This is the kind of vigilante justice that we seek to discourage because as demonstrated in this case, it could lead to serious consequences and unnecessary costs.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar