

THE EASTERN CARIBBEAN SUPREME COURT
GRENADA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim Number: GDAHCV2018/0455

BETWEEN:

Alawna Mascoll

CLAIMANT

AND

Kester Pysadee

DEFENDANT

Appearances:

Mrs. Anyika Johnson-Cassone of Ciboney Chambers for the Claimant

Mr. Nazim Burke for the Defendant

2020: December 15

2019: September 24

JUDGMENT

- [1] Burnett, M (Ag.): This is an application for assessment of damages consequent upon a judgment on admission entered on the 9th day of April, 2019 in favor of the claimant.

Background

- [2] On the 20th day of November 2018 the claimant filed a claim against the defendant for:
- (a) damages for breach of contract and;

- (b) general damages for loss, expenses and damage sustained to RAV-4 PAM 567 on the 6th January, 2018, on account of the defendant's negligent driving wherein the defendant collided into a parked vehicle of the claimant at Grand Mal, St George's Road.
- [3] Upon the matter coming on for Case Management on 19th February, 2019. Master Jan Drysdale noted that the defence contained certain admissions.
- [4] By notice of application filed on the 26th February, 2019, the claimant applied to the court for judgment on admission pursuant to part 14 of CPR 2000.
- [5] By order dated the 9th April, 2019, Master Drysdale entered judgment on admissions for the claimant against the defendant with damages to be assessed.
- [6] At the assessment of damages counsel for the defendant cross examined the claimant on her witness statement. At the end of the assessment of damages, counsel for the defendant raised a preliminary issue for the court's consideration.

The Preliminary Issue

- [7] Whether the admission made by the defendant in his defence giving rise to the judgment on admission, are conclusive on the issue of the damages to which the claimant is entitled?
- [8] If not, what is an appropriate measure of damages for the claimant in the circumstances.
- [9] Learned counsel for the defendant Mr. Nazim Burke submitted that a judgment on admission is conclusive on the issue of liability of the defendant only to the extent pleaded in the statement of claim and admitted in the defence but not necessarily on the issue of damages. He submitted that it is open to the defence at the assessment of damages stage to advance a causation objection, failure to mitigate loss or contributory negligence.
- [10] Counsel further submitted that the contract upon which the claimant relied was entered upon in the face of a statutory illegality, namely a violation of section 84 (3) of the **Motor Vehicle Road Traffic Act** which rendered the contract illegal and hence unenforceable.

- [11] He proffered that, even if the court were to find that the contract was enforceable at law the claimant contributed to her loss and damage through her own fault on two counts:
- (a) on renting the vehicle to the defendant, the claimant was guilty of contributory negligence, in that she rented the vehicle to the defendant, knowing it was contrary to her insurance policy, to rent out the vehicle, it being a private vehicle not having a concession to operate a rental and;
 - (b) the claimant rented the vehicle to the defendant, knowing that the defendant was not an “insured driver” under her policy of insurance and without bringing this fact to the attention of the defendant at the time the vehicle was rented to him.
- [12] Counsel posited that the claimant, having breached section 84 (3) of the **Motor Vehicle Road Traffic Act** and having regard to the negligence of the claimant, the court was required by virtue of the **Law Reform Miscellaneous Torts**¹ to reduce the damage otherwise recoverable by the claimant to the extent the court thinks just and equitable.
- [13] Counsel relied on the case of **Mahmound v Ispahani**².
- [14] Counsel also relied on the case of **Bonny Alexander v Stanislaus Smith and James Enterprises Ltd**³.
- [15] Counsel posited that it is incumbent on the court at the assessment of damages hearing, based on the judgment on the admission, to determine what the judgment on admission represents. Counsel submitted that as a general rule the judgment does not represent a decision that all loss or damage alleged by the claimant, was indeed suffered by her attributed to the defendant.

Claimant's Reply

- [16] Counsel for the claimant, Mrs. Anyika Cassone submitted that is not opened to the defendant to argue at the assessment of damages, that the contract under which the defendant possessed and used the claimant's vehicle is void. Counsel posited that this in effect is saying that the defendant is not liable.

¹ Cap 167, Section 3(2)

² [1921] 2KB 716

³ SLUHCV2017/0280 delivered on October 19th and December 20th, 2017 and March 9th, 2018

- [17] Counsel submitted that this position now being taken by the defendant goes to the issue of the liability which has already been settled by the judgment on admission obtained in the claim at bar.
- [18] The claimant contended that she pleaded a contract inclusive of its material terms to which the defendant admitted in his defence.
- [19] In effect, the claimant contended that the defendant admitted liability under the contract and that the defendant's obligations under the contract were to fully compensate the owner for the damage caused.
- [20] The claimant contended that contributory negligence was not a defence to claim in contract which did not involve a duty to exercise care and skill. Counsel posited that the duty to exercise care and skill is typical of contracts involving professionals such as accountants and lawyers and that contributory negligence may apply in those cases.
- [21] Counsel relied on the case of **Forsikringsaktieselskapet Vesta v Butcher and others**⁴.
- [22] The application by the claimant was made pursuant to CPR Part 14 of the Civil Procedure Rules 2000.
- [23] Part 14. 1(1) "a party may admit the truth of the whole or any part of any other party's case"
- [24] Part 14.1 (2) "a party may do this by giving notice in writing (such as in a statement of case or by letter) before or after the issue of proceedings".
- [25] These rules give the court discretion to enter judgment against a party who has admitted the claim brought against a party. The court may enter judgment if it is satisfied that based on the admissions, the other party is entitled to judgment.
- [26] At paragraphs 5 to 10 of the statement of claim the claimant pleaded the written agreement.

⁴ (1986) 2 AA ER 488

[27] **The Written Rental Agreement**

- 5) The said signed written rental agreement dated the 29th December, 2017, captures that the defendant rented the claimant's van on the 29th December 2017 and outlines the terms and conditions of the rental. A true copy of the written agreement was attached hereto and marked "AMI".
- 6) It was an expressed term of the said agreement that the defendant would be liable for the cost of repairs occasioned by any collision occurring during the rental period.
- 7) Clause 4 of the said agreement states as follows:" the renter further agrees to fully compensate the owner for any loss or damage to the vehicle during the term of this agreement whether caused by collision, theft or any other cause, except that which shall be determined to be caused by a fault or defect of the vehicle".
- 8) It was further expressly provided in the said agreement that the defendant would be liable to compensate the claimant for any loss of use incurred in the event of an accident occurring. The agreement expressly states" in the event of any accident the renter will be charged for loss of use while vehicle is being repaired".
- 9) The agreement further expressly stated that "the renter shall immediately report any accident to the owner..."
- 10) The agreement also stipulated that, "the renter agrees not to use the vehicle...to operate in any negligent manner."

[28] The defendant admitted in paragraphs 5 to 10 in his defence and in paragraph 19; the defendant admitted liability for the collision but disputed the quantum in paragraph 27 of the statement of claim.

[29] The defendant in the case at bar seeks to attack the judgment on admission at this stage of the proceedings.

[30] The defendant did not seek to have the judgment set aside as provided for neither did the defendant sought to appeal the judgment, as was available to the defendant.

[31] The Privy Council in the case of **Isaac v Robertson**⁵ held that an order of court is valid unless set aside, varied, or successfully appealed.

[32] I am also fortified by the legal principle enunciated in **Wilson v R**⁶ where the court stated:

“It has long been a fundamental rule that a court order made by a court having jurisdiction to make it stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. It is also well settled in the authorities that such an order may not be attacked collaterally and a collateral attack maybe described as an attack made in proceedings other than those whose specific objects the reversal, variation or nullification of the order of the judgment...”

[33] Against this background the Court rules that the judgment on admission is a regular judgment and remains a proper judgment in this matter.

The Assessment

[34] The claimant claims damages for loss expenses and damages sustained to vehicle

- (i) special damages of \$22,401.01
- (ii) interest
- (iii) costs

Special Damages

[35] It is well established that Special Damages must be specifically pleaded and proved⁷. The claimant claims the sum of \$22,401.01 as follows:

- (i) Body work repairs done by Khemraj's Garage cost of repairs \$2,000.00. A copy of a receipt was attached to the Witness Statement of the claimant marked Ex. A.M.2.
- (ii) Khemraj's Garage procured left shocks and four rims. The four rims were acquired since single rims could not have been obtained as the available supplier sold the rims as a set. A receipt totaling \$1,500.00 was attached to the Witness Statement of the claimant and marked "AM3".
- (iii) Labour cost to replace parts by Prince Auto Engineering at a cost of \$850.00. A true copy of the receipt was attached and marked "AM4".

⁵ 3WIR 705

⁶ (1983) 25 CR 594

⁷ Per Lord Donovan in *Perestrellos v United Paint Co* [1969] W.L.R 570

- (iv) Parts totaling \$4,480.00 purchased from M&M Motors and Rental. A copy of the receipt was submitted and marked "AM5".
- (v) Left headlamp obtained from Bain Autoworld and Accessories at a cost of \$1,000.00. A copy of receipt marked "AM6" was tendered.
- (vi) Rack end purchased from Dollar Savers at a cost of \$150.01. A copy of receipt marked "AM7".
- (vii) As a result of the accident, the computer of PAM 567 had to be scanned and reprogrammed. This was done by Elvis Auto at a cost of \$260.00. A copy of receipt was submitted as Ex. "AM8".
- (viii) Cost of \$200.00 for towing service from point of accident to Khemraj's Garage. A copy of receipt submitted Ex. "AM9".
- (ix) Cost of \$163.15 for a full tank of gas subsequent to the repairing of the vehicle. In accordance with the agreement signed by the parties. A gas bill dated 22nd March, 2018, is submitted marked "AM10".
- (x) The claimant alleged that as a result of the claim on her comprehensive insurance, her insurance undertook to fix the other vehicle. As a result of the claim, the claimant lost the no claim bonus of 25% on premium and had to pay full renewal of \$2,113.45 instead of \$1,585.09. The claimant claims the difference of \$528.36. A copy of renewal notice from Netherland Insurance is submitted marked "AM11".
- (xi) \$300.00 for pre-action protocol letter and bailiff's service "Ex AM12".
- (xii) Subtotal of Special Damages - \$11,431.52

Loss of Use

- [36] The claimant is alleging that she was unable to use the van for a period of three months from 6th January, 2018 to mid-April, 2018. The claimant claims loss of use for 90 days from 6th January to 7th April, 2018 at a rate of \$130.00 per day totaling \$11,700.00.

Defendant's Response to Claim

- [37] The defendant provided a witness statement challenging the claim made by the claimant.
- [38] The defendant contended that he is only aware of the following damage to claimant's vehicle:
- (a) one front wheel and not two, as stated in paragraphs 13(xiii) of the Statement of Claim;

- (b) damage to one (1) rim and not four (4) as stated in paragraph 13(xii) of the Statement of Claim and;
- (c) damage to the front right shocks in paragraph 13(ii) of the Statement of Claim and not the front left and right shocks as stated in paragraph 13.

[39] The defendant challenged the cost for repairs part to repair vehicle and submitted an estimate marked "KP1" totaling \$8,597.50.

[40] Kenroy Johnson, a stevedore by occupation, also provided a witness statement for the defendant.

[41] In his statement Mr. Johnson stated having seen PAM 567 at the garage at Clarke's Court Bay. He stated that he got the Chassis number. Johnson provided a quotation of \$5,470.87. Invoice marked "KJ1".

Loss of Use

[42] In the claim for loss of use, the claimant is required to mitigate her loss flowing from a breach of contract or breach of duty of care to another.

[43] The claimant claims that subsequent to the accident the defendant gave the reassurance that he will defray the cost to repair the damage sustained. The claimant provided the defendant with an estimate; however, the defendant informed the claimant that he can obtain the parts cheaper through his cousin. This did not materialise.

[44] In order to mitigate her loss, the claimant caused a letter to be written to the defendant seeking compensation and to resolve the matter, which the defendant did not comply.

[45] Counsel for the defendant submitted that the fundamental principles that the claimant in an action for negligence is entitled to a sum for damages, which will return the claimant in a position she would have been had the accident not occurred⁸.

⁸ Darbishire v Warren [1963] 3 All ER 310

[46] Where the Special Damages for repair of the vehicle sought by the claimant is high and not fully substantiated and no evidence is presented of pre-accident value, post accident value, whether the vehicle was damaged beyond repair or of any replacement value. It is open to the court to reduce the amount claimed if the circumstances warrant⁹.

[47] Special damages are quantifiable damages which a claimant has already spent as a result of the loss and damage suffered. It is capable of substantially exact calculation. It must be specially pleaded and proved. It is plain law...that one can recover in an action only special damage which has been pleaded, and of course, proved.

Tewodros v. Malik and Malik, SLUHCV 2009/0746

[48] On an assessment of damages a Claimant who fails to particularize and prove sums claimed under the rubric of "special damages" will not be allowed to recover those sums as special damages.

Wells v G4S Security Services (Grenada) Limited, GDAHCV2008/0416

Jules v Williams and Cuffy, DOMHCV2009/0018

Law and Analysis

[49] "The rule is that the plaintiff must prove his loss. The correct approach is as stated in Lord Goddard CJ in **Bonham Carter v Hyde Park Hotel [1948] 64 Law times 177**: Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars and, so to speak throw them at the head of the Court, saying 'This is what I have lost; I ask you to give me these damages'. They have to prove it."

[50] The claimant claims that she suffered inconvenience while the vehicle was damaged and remained unrepaired for three (3) months. PAM 567 was a family vehicle and was used to drop off her son to school, take her mother to supermarket and church, and to take her grandmother to and from doctor's visits.

⁹ Kevin Rodney Charles v Devon Pierre GDAHCV2016/0155

- [51] The claimant stated that during the period she suffered great hassle and inconvenience to make alternative arrangements to do all of the aforementioned activities.
- [52] The court notes that an owner of chattel, such as a motor car, wrongfully deprived of its use may recover damages for that deprivation and inconvenience due to loss of use. **(See Halsbury's Laws of England, 4th Edition V.12(1) para.865 & The Mediana Supra).**
- [53] **In Darbishire v Warren¹⁰**, Pearson LJ commented that "the claimant is not entitled to charge the defendant by way of damages with any greater sum than that which he reasonably needs to expend for the purpose of making good the loss. In short, he is fully entitled to be extravagant as he pleases but not at the expense of the defendant".
- [54] As to proof of damages, I am satisfied that the claimant suffered the damages to her van as described in his Statement of Claim and Witness Statement. I am satisfied with the documents tendered in support of the claim and the assessment.
- [55] I accept the claimant's evidence that the accident was caused solely by the negligence of the defendant.
- [56] I accept the evidence that the vehicle suffered multiple areas of damage as a result of the accident.
- [57] With regards to loss of use, the claimant provided reasons why the vehicle took four (4) months to repair which was due to the action of the defendant.
- [58] It is noted that the court was not provided with any proof of expense by the claimant.
- [59] Having assessed the evidence in its totality I conclude that the claimant took reasonable steps to mitigate her losses.

¹⁰ [1963] 3All ER310

[60] I rely on the conclusion by Jones, J in the case of **Lynette Hughes v Doughty Deonarine & Ryan Deonarine** "It is trite law that usual period for loss of use in the case where the chattel is repairable in the length of time it would have taken to repair the chattel."

[61] Having accepted that the claimant was deprived of the use of vehicle through no fault of her and having regard to the fact that the claimant has taken steps to mitigate her losses. I am inclined to award him the total claim for loss of use of 90 days at \$130.00 per day - \$11,700.00.

[62] Total Special Damage \$23,131.52. I so award.

General Damages

[63] The main aim of an award of damages is to compensate a claimant for the harm sustained. General Damages are presumed to flow from the wrong inflicted and need not be pleaded.

[64] The purpose of an award of damages for breach of contract is to compensate the injured party for loss, rather than to punish the wrongdoer.

[65] The general rule is that damages should (so far as monetary award can do it) place the claimant in the same position as if the contract had been performed¹¹.

[66] The principles which guide the Court in assessing General Damages are set out in the landmark Case of Cornilliac v St. Louis [1965] 7 WIR 491. The Court is required to consider the following:

1. the nature and extent of injuries sustained;
2. the nature and gravity of the resulting physical liability;
3. pain and suffering;
4. loss of amenities the extent to which pecuniary prospects were affected.

[67] The claimant did not fully satisfy the Court as to the loss suffered as a result of the breach. In the circumstances, the Court will award nominal damages in the sum of \$2,000.00 as a fair and reasonable amount to reflect some level of loss of amenity.

¹¹ Robinson v Harman (1848) 1 Ex 850

CONCLUSION

Accordingly the claimant is awarded

1. Special Damages of \$20,451.52. Interest at the rate of 3% from date of accident to date of assessment and 6% from date of judgment until payment is made.
2. General Damages of \$2,000.00. Interest at the rate of 6% per annum from date of service of claim form until payment in full.
3. Prescribed costs in accordance with CPR 65.5.



Rickie Burnett
MASTER (Ag.)

By the Court


Registrar

Registrar Supreme
Court Grenada