

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

Claim Number: **SLUHCV2019/0072**

Between

J.Q. MOTORS LIMITED

Claimant

and

**(1) DESMOND WALLACE
(2) VELMA WALLACE**

Defendants

Appearances: Mrs. Edith P. Jeffrey-Nelson of counsel for the Claimant
Ms. Sue-Anna Frederick of counsel for the Defendants

2020: June, 30th
2020: September, 28th

JUDGMENT ON ASSESSMENT OF DAMAGES

Introduction

[1] **SANDCROFT, M. [Ag.]:** The matter for my judicial consideration is an application for an assessment of damages on the narrow issue of quantum for loss of use of a motor vehicle. The accident between the defendants' vehicle and the claimant's vehicle occurred on 26th January 2018. On 29th March, 2018, the claimant's loss was settled by its insurance company. However, there are particular aspects of the facts that I will be alluding to in the discussion and findings section.

- [2] The claimant applied to have the damages assessed and costs taxed. He supported his application with an affidavit and stated that the polemical point of contention between the parties was under the heading of loss of use.

Background

- [3] The claimant's witness statement was allowed to stand as his evidence in chief and the claimant stated that these proceedings were subrogation proceedings, and that the claimant was seeking his own uninsured losses as well as the losses of the Insurer which sum was paid out to the claimant in pursuance of maintaining its obligations under a third party Policy.

- [4] The defendant submitted that the amount proven by the claimant under the heading of special damages was \$20,965.06, which represented the cost of repairs and the cost of the police report.

- [5] The claimant had orally agreed to accept the sum of ECD\$20,965.06

The Claimant's Case

- [6] The claimant sought damages for the loss of use of its vehicle for the period of time for which it was not in use during which time the claimant suffered inconvenience as a consequence of the defendants' negligence.

- [7] The claimant in this case is a company which sells a variety of brand new and pre-owned vehicles. The claimant's vehicle the subject matter of this suit is a Suzuki APV a minivan which was used to carry out some of the company's business including carrying parts and which was also used as a courtesy car for the company's customers.

- [8] The claimant submitted that when the vehicle was damaged by the negligence of the defendants this caused the claimant great inconvenience of such a nature that it became necessary for the claimant to utilize a substitute vehicle from its pre-owned car department. By doing so the said pre-owned substitute vehicle had to be withdrawn from active sale for a period of sixty-two (62) working days causing a further inconvenience to the claimant.

- [9] The claimant further submitted that the said vehicle was not a standard size car for which

\$150.00 per day is usually awarded but rather a minivan, the loss of use of which was significantly higher than the inconvenience caused to someone driving a private car who could easily take a bus or rent a standard car for \$150.00. This vehicle was utilized in a business even though it was not a profit earning chattel.

[10] The claimant posited and submitted the case of **Dale and Cecile James and Eadom Gibbons** Claim No. DOMHCV236/2014, on how the court should deal with such matters.

Master Actie (as she then was) adumbrated thus:

Quite apart from the absence of written evidence to substantiate the amounts claimed by the claimants the court in such circumstances can rely on the oral evidence of the claimants and witnesses to reach an amount which is not out of scale. The Court of Appeal in Attorney General of Antigua and Barbuda v The Estate of Cyril Thomas Bufton Lona Eileen Bufton³ held that the failure of the claimant or counsel to provide evidence of value does not mean, however that the court is inescapably driven to refuse to award any amount for an undoubted loss. The court referred to the Privy Council decision in Greer v Alston's Engineering Sales and Services Ltd quoting from McGregor on Damages 13th Ed at para 295 stated: "Nominal damages may also be awarded where the fact of a loss is shown but the necessary evidence as to its amount is not given. This is only a subsidiary situation, but it is important to distinguish it from the usual case of nominal damages awarded where there is a technical liability but no loss. In the present case the problem is simply one of proof, not of absence of loss but of absence of evidence of the amount of loss." It was decided that nominal damages, in this context did not mean small damages but meant damages that were substantial provided they were not out of scale.

[20] The text Halsbury's 4th edition states the basic rule where a profit-earning chattel, that is used by the plaintiff in the course of his business, is damaged or destroyed: the plaintiff is entitled to loss of profits during a reasonable period of repair, and in the case of destruction he is entitled to loss of profits during the period which is reasonably required to replace the lost article in the market. The cost of a substitute, reasonably hired, may provide the measure of damages⁶. An

individual is entitled to damages for the inconvenience due to the loss of use of a chattel.

[11] The claimant further stated that the claim for \$250.00 a day was reliant on the type of vehicle, the use of the vehicle in the business and the fact that the claimant had to utilize a substitute vehicle by withdrawing the substitute from possible sale to take on the responsibilities of the damaged vehicle for the time it was damaged.

[12] The claimant posited that it mitigated its losses by repurposing and reassigning the substitute vehicle instead of hiring a vehicle of like model which could have cost approximately \$300.00 a day. The Claimant is entitled to claim and to be awarded the sum of \$250.00 per day for loss of use.

[13] The claimant further posited that it further mitigated its loss and was able to source the parts from another vehicle on island, but it took several weeks for same to be sourced and secured as the Suzuki APV was not a popular vehicle on the island.

[14] The claimant submitted the case of **Hazel Augustin and Leo Fevrier v Allan St Ange** SLUHCV 2006/0170 which is also instructive in that the court exercised its discretion to award damages for loss of use at \$250.00 when the vehicle was a profit earning chattel and for one month.

At paragraph 8 of her judgment Master Taylor Alexander as she then was stated:

“The claimants submit that their claim is reasonable. They allege that our courts have in certain circumstances awarded loss of use up to a period of six (6) months where the vehicle in question had been written off, and it was reasonable to so award. The claimants also relied on the decision of *Blenman J* as she then was in *Tropical Builders v Gloria Thomas* ANUHCV228/2004 where her Ladyship considered a daily sum of one hundred and fifty dollars (\$150.00) for a period of seventy three (73) days for a non-profit earning Chattel.”

[15] The claimant also submitted the case of **James Bristol and Andre Bernard** in which the Court found in favour of the claimant who claimed eighty seven (87) days loss of use at \$200.00 a day. In this case his vehicle was a total loss and because its pre accident value was \$309,000.00 he

could not afford to replace it. He had rented a Range Rover Discovery for \$800.00 USD a week for a period of 87 days. The Vehicle was not a profit earning chattel nor was there evidence that it was utilized in a business but because of the value of same the court awarded \$200.00 a day.

[16] The claimant further submitted the case of **Malcolm Joseph et al v Alison Charles** Claim No. GDAHCV2002/0077. Although the vehicle was a profit earning chattel as opposed to a vehicle used in the course of business, the loss of profit awarded was \$250.00 daily. In this case 2 reasons were given for the delay (1) the defendant's failure to pay on a timely basis the Claimant being impecunious and (2) the fact that parts had to be sourced from overseas.

Barrow J elucidated the Defendant's duty as thus:

"It is unquestionably the obligation of the victim of a tort to take such steps to mitigate his loss as are reasonable in the circumstances. What is reasonable, however, is a question of fact to be considered in light of the particular circumstances of a given case. In this case I believe it was reasonable for the claimant to wait some time to see whether the defendant (or his insurers) would pay the claimant for the damage that the defendant caused. The primary obligation, I would think, was on the wrongdoer to pay compensation for the damage that he had caused. It was the defendant who had the primary duty to act promptly. I reject the proposition that because the claimant had comprehensive insurance cover that displaced the defendant's primary obligation. That insurance cover was for the benefit of the claimants, not for the benefit of the defendant. It is settled law that a claimant need not take steps to mitigate his loss by recovering from a third party what may be payable by the third party to the claimant: The Liverpool (No. 2) [1963] P. 64.

[15] However, it is not the law that the claimant was entitled to sit by and wait until he could collect from the defendant. The obverse of the proposition that the defendant was not entitled to rely upon the fact that the claimants had comprehensive insurance is that the claimant was similarly not entitled to rely upon the fact that the defendant had accident insurance to relieve the claimant of the obligation to mitigate his loss. Where, however, a claimant delays carrying out repairs because of his impecuniosity the claimant will not be prejudiced by this circumstance. This was famously expressed by Lord Collins in Clippens Oil Co. v Edinburgh and District Water Trustees [1907] A.C. 291 at 303 thus: "In my opinion the wrongdoer must take his victim talem qualem, and if the position of the latter is

aggravated because he is without the means of mitigating it, so much the worse for the wrongdoer, who has got to be answerable for the consequences flowing from his tortious act.”

[17] The claimant submitted that in the said **Malcolm Case** a sufficient reason for the delay in securing the parts from Trinidad was not given but the court still accepted unavailability of parts as a reason for delay even if it found no good reason was given for the extent of it. The Court awarded 66 days for loss of use at \$250.00 a day as the vehicle was a profit earning chattel. Therefore, the delay and difficulty in sourcing parts were beyond the control of the claimant who did not stock the part and had to source same from China. However, whilst awaiting the part it was able to secure the part from a vehicle in Saint Lucia and therefore was able to mitigate its loss by reducing the days the vehicle would have remained unusable.

[18] The claimant finally submitted that it was entitled to loss of use at the rate of \$250.00 for a period of 62 days together with interest from date of filing the claim to date of payment at 6% per annum with prescribed costs.

Defendant’s Submissions

[19]The defendant submitted that damages of loss of use, like other damages are subject to the claimant’s duty to mitigate their loss, so the claimant is not entitled to recoup damages beyond the time when they ought reasonably to have replaced the chattel that was destroyed¹.This principle was emphasised in **Moore v Der**² where Lord Justice Karminiski also said:

“My lord has referred to the passage in Wayne on Damages, and I agree with him that the law is correctly stated there. It is summed up in a single sentence: "Whether the plaintiff has acted reasonably is in every case a question of fact and not of law".

[20] And also in **Hybert Construction v Henry Bacchus**³ the court awarded loss of use for 14 days because two weeks was deemed to be a reasonable period within which to buy a replacement.

[21] The claimant further submitted the case of **Angus Merius v Bong Kwan Jeon**⁴, the Claimant argued that he was entitled to recover damages for loss of use for the period of 35 days. The court

¹ Halsbury’s Laws of England/DAMAGES (VOLUME 29 (2014))/7 at para 418

² [1971] EWCA Civ J0618-3

³ SLUHCv2004/0083

⁴ SLUHCv2008/0630

noted that the insurance company paid off the Claimant's bank within 10 days and that there was no evidence of the efforts made to obtain duty free concession. Wilkinson J stated:

“He said that the process of acquiring duty free concession for the chosen motor vehicle delayed purchase. The Claimant however, failed to tender any evidence in relation to his efforts in relation to obtaining the duty-free concession. I am therefore prepared to award the Claimant 21 days loss of use”.

[22] The claimant also submitted the authorities of **Malcolm Joseph v Allison Charles**⁵ and **Tropical Builders v Gloria Thomas**⁶. In **Tropical Builders**⁷, the court noted that the delay was attributable to the insurance company's delay in settling the claimant's claim. In the instant case, the claimant has not pleaded that the delay by its insurers contributed to loss of use. Rather, the claimant averred that the reason for the delay “is not due to impecuniosity but rather the unavailability of parts⁸”.

[23]The claimant posited that the case of **Malcom Joseph v Allison Charles**⁹ did not assist the claimant's contentions as the delay in that case was attributable to impecuniosity. And by the claimant's own admission, in paragraph 34 of the Submissions for the Assessment of Damages, the delay in effecting repairs in the instant case “is not due to impecuniosity”. And that notably, in **Malcom Joseph v Allison Charles**¹⁰, the claimant contended that the delay in effecting repairs was due to the Defendant's insurers failure to indicate that it would not settle the claim and due to the fact that parts had to be obtained from Trinidad.

[24] The defendant further submitted that **Article 3 of the Insurance Council of St. Lucia Guidelines** stated that “at the discretion of the Insurer, the Indemnity under the Third-Party section of the policy for Loss of Use claims will be limited to 30 days.” Although this provision was cited as being discretionary, it was widely known as the applicable limitation period.

[25] The defendant also posited that In the instant matter, although the claimant has stated that there

⁵ SLUHCV2002/0077

⁶ ANUHCV228/2004

⁷ *ibid*

⁸ See paragraph 34 of the Submissions of Claimant in support of Assessment of Damages filed 22 July 2019.

⁹ SLUHCV2002/0077

¹⁰ *ibid*

was a delay of 62 days due to the unavailability of parts¹¹, the claimant has provided no evidence of the efforts made to obtain the parts locally, nor has the claimant provided evidence that would prove the date on which the parts were ordered or delivered. Relying on the authorities of **Angus Merius** and **Malcolm Joseph (supra)**, it is submitted that the claimant has failed to prove that the delay was reasonable, in light of all the facts and evidence in this case.

[26] The defendant further posited that under the rubric “Guide to Loss of Use Allowance”, **Article 4 of the Insurance Council of St. Lucia Guidelines** stipulates that where supporting documentation is not provided, the recommended allowance for a private car is \$100.00 daily and \$125.00 daily for a pick-up van. The Claimant’s vehicle is an APV, and accordingly is most likely to be classified as a van. In the premises, the Defendants submit that the applicable rate is \$125.00 daily.

[27] The defendant finally submitted that if any loss of use should be awarded at all, it should not be awarded for more than a 30-day period at a rate of \$125.00 daily.

[28] The issues to be determined by this Court are:

- i. Whether the claimant is entitled to loss of use of the motor vehicle.
- ii. Whether the claimant can reasonably claim for over thirty days for the loss of use.

Analysis & Findings:

Reasonable Care

[29] It is well established that the driver of a motor vehicle has a duty to take reasonable care not to cause injury or damage to other road users. Lord Jamieson in **Hay or Bourhill v James Young** 1941 S.C. 395, 429, in a statement which was later approved by the House of Lords ([1943] A.C. 92) explained the duty as follows:

“No doubt the duty of a driver is to use proper care not to cause injury to persons on the highway or in the premises adjoining the highway, but it appears to me that

¹¹

his duty is limited to persons so placed that they may reasonably be expected to be injured by the omission to take such care.”

Earlier in the same case, Lord MacMillan expressed the duty in terms of “proper care” and had this to say at page 403:

“Proper care connotes avoidance of excessive speed, keeping a good look-out, observing traffic rules and signals and so on. Then to whom is the duty owed? Again I quote and accept the words of Lord Jamieson: ‘... to persons so placed that they may reasonably be expected to be injured by the omission to take such care.’ The duty to take care is the duty to avoid doing or omitting to do anything the doing or omitting to do which may have as its reasonable and probable consequence injury to others and the duty is owed to those to whom injury may reasonably and probably be anticipated if the duty is not observed.”

[30] Reasonable care means the care which an ordinarily skillful driver would have exercised under all circumstances, and connotes an “avoidance of excessive speed, keeping a good look out, observing traffic rules and signals” and so on. What is reasonable depends on the circumstances of each case and is a question of degree (**Bourhill v. Young** [1943] A.C 92).

In **Esso Standard Oil S.A. Ltd. & Anor. V. Ivan Tulloch** [1991] 28 J.L.R. 553, it was held that “all users of a road have a duty of care to other road users.

[31] The elements of negligence are trite and are set out in the case of **Blyth v Birmingham Waterworks Company** (1856) 11 Exch 781. Harris JA in **Glenford Anderson v George Welch** [2012] JMCA Civ 43 stated at paragraph 26:

“It is well established by the authorities that in a claim grounded in the tort of negligence, there must be evidence to show that a duty of care is owed to a claimant by a defendant, that the defendant acted in breach of that duty and that the damage sustained by the claimant was caused by the breach of that duty...”

As it relates to motor vehicle accident cases, the author in **Bingham & Berrymans' Motor Claim** states:

“There is a duty on the driver of a motor car to observe ordinary care or skill towards persons using the highway whom he could reasonably foresee as likely to be affected.”

Further, it is a well-recognized principle that where there are two or more vehicles involved in an accident, or pedestrian and vehicles, each owe to the other a duty of care to avoid causing harm to the other.

[32] In **Berrill v Road Haulage Executive** [1952] 2 Lloyds Rep 490, Slade J expressed the duty of care which would be appropriate in these circumstances as follows:

“Paraphrasing the words of Lord Uthwatt in London Passenger Transport Board v Upson [1949] AC 155, a driver is not bound to foresee every extremity of folly which occurs on the road. Equally he is certainly not entitled to drive upon the footing that other users of the road, either drivers or pedestrians, will exercise reasonable care. He is bound to anticipate any act which is reasonably foreseeable, which the experience of a road user teaches that people do, albeit negligently.”

[33] From the foregoing, it is clear that both the claimant and the defendant owed a duty of care to operate their vehicles in a manner so as not to cause harm to each other.

Loss of Use

[34] It is trite law that the injured plaintiff who has suffered actual loss through being denied use of his or her car is to be put in the same position, so far as money can do it, as if the tort had not been committed. Had the tort not been committed, the plaintiff would have had the use of a car which not only did the job require of it, but did so with higher levels of safety and luxury than the other vehicle that was adequate to meet the plaintiff's needs.

[35] The underlying principles are by no means novel. As explained in **McGregor on Damages**:

“[w]here the claimant’s goods have been damaged, the basic pecuniary loss is the diminution in their value which is normally measured by the reasonable cost of repair”. [1] Further, a claimant who has lost the use of goods whilst they are repaired may be awarded damages for general loss of use or, in the absence of evidence of inconvenience, interest on the capital value of the goods. [2] Different principles are applied with respect to profit earning and non-profit earning goods. With the former, loss of use may be assessed by reference to the expected profit over the period when the goods were unavailable. That provides an appropriate monetary measure of the loss. Where the goods fall into the non-profit earning category the claimant must establish a need for the goods during the period they were unavailable. Compensation will be payable for the inconvenience caused by the loss of use. Just as the diminution in value of the goods may conveniently be measured by the reasonable cost of repairs, so the inconvenience caused by the goods being unavailable may be measured by the reasonable cost of a replacement.

[36] **McGregor** deals with the principles governing recovery of such consequential losses (being losses other than the cost of repair), focusing on the hire of substitute vehicles, in the following terms:

“As far back as 1826 the cost of the hire of a substitute ship during the period of repair was held recoverable in *The Yorkshire man*. In modern times, however, it is the hire of substitute cars that commands the damages field. For many years the cases were concerned with perfectly ordinary hirings from conventional car hire companies; latterly, hirings from credit car hire companies, with their special features, have been mounting and have nearly overtaken conventional hirings. While some of the issues are the same for both – such as the issue of whether there is any need to hire at all or of whether the period of hire is too long – it is nevertheless convenient, and also makes for clarity, to consider separately the ordinary, straightforward hiring cases and the credit car hiring cases.

[37] The common law provides that a claimant may claim for loss of use where he has been denied the use of his motor vehicle, possibly due to breach of a duty by another e.g. a collision, or negligence, dropping the motor vehicle whilst on a lift-out, breach of contractual duty or statutory duty e.g. negligent repair, delayed delivery, etc.

The owner will be entitled to more than merely nominal damages, the loss of pleasure being a ground for an award even though this is not accurately measurable.

The recent case of **Henry Broughton-Leigh v Geoffrey Hunton** QBD (Mercantile Court) 17th March 2010 acts as useful guidance on this. The claim involved damage to a motor yacht arising out of a partial flood. The vessel was not used commercially i.e. it was a private pleasure vessel. The owner was deprived of her use between 21 August 2005 and 21 June 2006. The Defendant argued that as the vessel was laid up between 1 November and 1 April every year the Claimant should only recover damages for loss of use from 21 August to 1 November and 1 April to 21 June. His Hon. Judge Pelling QC, rejected this and found that the Claimant was entitled to succeed in the full value of his claim over the full period.

[38] In **Headley Brown and Jacqueline Brown v Linvil Tyrel** Supreme Court Civil Appeal No. 52/90 delivered on the 18th December 1990, Forte J.A (as he then was) stated:

"The Liesbosch case (per Lord Wright) recognizes the common law principle of restitution in integrum i.e. that where a plaintiff's property has been destroyed by the negligent act of another then he should recover "such a sum as will replace it, so far as can be done by compensation in money, in the same position as if the loss had not been inflicted on them, subject to the rules of law as to remoteness of damage." The real question therefore is whether the appellants' payment of interest on the loan used for the replacement of their motor car was in the instant case too remote"

The Court held that the appellants were entitled to recover the interest payments they incurred in purchasing the motor car as replacement of the one destroyed, the interest being the result of an everyday business transaction, which would have been foreseeable or in contemplation at the time of the action of the respondent, whether as a tortious act or an act in breach of contract.

[39] Generally, loss of use would be determined by the time it would reasonably take for a claimant to get a replacement vehicle: see the pronouncement of Jones J in **Lynette Hughes v Dognath Deonarine & Ryan Deonarine**¹² that:

¹² Lynette Hughes v Dognath Deonarine & Ryan Deonarine HCA S234 of 1998.

“It is trite law that the usual period for loss of use in the case where the chattel is repairable is the length of time it would have taken to repair the chattel. Where it is uneconomical to repair the claim for loss of use is limited to the time it would have reasonably taken to obtain a replacement.”

[40] In **Owen Tharkur v Cleveland Williams** Common Law Suit No. T 1 18/84 delivered on 13th April 1989, Bingham J (as he then was) stated inter alia at page 9 of the judgment:

“...He has claimed loss of use for six weeks at a cost of \$600 per week. This is the normal period allowable in cases where a vehicle has been written off as a total loss to enable a plaintiff to secure a replacement vehicle.

[41] In May 2000 the House of Lords in **Dimond v Lovel** [2002] 1 AC 384 (HL) addressed a claim for recovery of rental charged by a credit hire car company. The primary issue turned on the assertion that the credit hire agreement failed to comply with the requirements of the **Consumer Credit Act 1974 (UK)** and was therefore unenforceable. The party at fault submitted that the claimant had thus obtained a replacement vehicle at no cost to her, but would be doubly compensated if she were to receive damages for the loss of use of her vehicle. While the claim failed on that basis, three members of the House expressed views as to the assessment of damages in such a matter, assuming that the credit agreement had been enforceable. Thus, in the words of Lord Browne-Wilkinson, agreeing with Lord Hoffmann, the damages recoverable “would have been limited to the sum required to provide an alternative vehicle, i.e. the spot rate quoted by hirers other than accident hire companies.” The calculation based on the rental charges payable to the credit hire company was deemed not to be an appropriate measure of damages because, as Lord Hoffmann and Lord Hobhouse of Woodborough both explained, the charges covered additional benefits which were not compensable in a claim against the tortfeasor. Lord Hoffmann expressed the difficulty in the following terms:

“By virtue of her contract, she obtained not only the use of the car but additional benefits as well. She was relieved of the necessity of laying out the money to pay for the car. She was relieved of the trouble and anxiety of pursuing a claim against Mr Lovell or the C.I.S. She was relieved of the risk of having to bear the irrecoverable costs of successful litigation and the risk, small though it might be, of having to bear the expense of unsuccessful litigation. Depending upon the view

one takes of the terms of agreement, she may have been relieved of the possibility of having to pay for the car at all.”

[42] As explained by Lord Hobhouse, what was recoverable from the defendant was the cost of hiring a substitute car; not the excess cost of other benefits obtained under the credit hire contract.

[43] Lord Nicholls of Birkenhead took a different view as to the additional charges. He stated the principle as follows:

“The position in law is that the negligent driver, backed by his insurers, is liable to pay reasonable charges incurred in hiring a replacement car if this is reasonably necessary.”

In contrast to Lord Hoffmann and Lord Hobhouse, Lord Nicholls took the view that the additional charges might be reasonably necessary because they might provide the only practical way in which a replacement vehicle could be obtained and the cost recovered.

[44] The claimant has shown by way of his affidavit that he had shown some proof that he secured a vehicle from the Company’s fleet of motor vehicles and in light of that, he has shown to this Court that he had suffered from a substantially moderate loss of the use of his motor vehicle. It is my considered view and I so hold, that an overall period of eight (8) weeks for loss of use would be reasonable in the present circumstances.

[45] I also accepted that once special damages are averred and proved it will be awarded. In the instant case, it was proven to some extent. In any event, and in the face of a lack of some documentary evidence, his claim is deemed reasonable and justifiable and is a charge for the defendants: see Pearson LJ comment in **Darbshire v Warran**¹³ 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.”

[46] I have also taken into consideration the estimate of approximately ECD\$15, 000.31 as the value for the loss of use. It is only when there is some evidence before the court that the court can weigh the

¹³ Darbshire v Warran [1963] 3 All ER 310.

circumstances and say whether or not the evidence provided is reasonable and that there is sufficient proof. However, I find that the sum claimed appears to be a little excessive and cannot be justified and I also find that the sum exceeds the cost that the claimant would have incurred in the ordinary course of replacement of the vehicle.

[47] The Court would therefore substitute the sum of ECD\$10, 850.00 which would take into account the year, make, model, and odometer reading of the Suzuki APV Minivan in 2018.

[48] Finally, I wish to express my deepest gratitude to Counsel for their attempts in providing illuminating legal light on these trite issues of law.

Orders

[49] The Court's Orders are as follow:

1. The claimant is awarded general damages of ECD\$31, 815.06 made up of the amount of ECD\$10, 850.00 to the claimant for loss of use of his motor car;
2. the claimant is awarded interest on the general damages at the rate of 6% per annum from the 26th day of January,2018 to the 28th day of September,2020;
3. the claimant is awarded interest on the special damages at the rate of 3% per annum from the 26th day of January,2018 to the 28th day of September,2020.

Ricardo Sandcroft
Master [Ag.]

By the Court

Registrar