

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

Claim Number: **SLUHCV2017/0565**

Between

Michael Romero

Claimant

and

**(1)Jaceline St. Martin
(2) Anthony Alcee**

Defendants

Appearances:

Mr. Gerard Williams of Counsel for the Claimant

Ms. Cynthia Hinkson-Ouhla of Counsel for the Defendants

**2020: February, 27th
2020: May, 25th**

JUDGMENT ON ASSESSMENT OF DAMAGES

Introduction

[1] **SANDCROFT, M. [Ag.]**: The matter for consideration is an application for an assessment of damages. On or around the 23rd day of January, 2017 at about 12:45 p.m., the claimant was driving his motor vehicle registered as PG1469, along the Marisule Highway in a northerly direction. On approaching the Courts junction, the claimant signaled right, indicating his intention to turn right into a minor road whereupon he brought the said vehicle to a stop and waited for an opportunity for the south-bound traffic to dissipate in order to execute his turn. The 1st defendant, who was also travelling north-bound behind the claimant's vehicle registered as PG1469, in motor vehicle registered PB 7058, rear-ended the claimant's vehicle, causing the said vehicle to spin out of control before coming to a rest. 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 one affidavit.

Background

- [3] The claimant's witness statement was allowed to stand as his evidence in chief. The claimant was at all material times the driver and owner of a motor vehicle registered as PG 1469. The claimant is also a qualified mechanical technician for BMW motor vehicles and is employed with M Motors, the local BMW dealers in Saint Lucia.
- [4] The 2nd defendant was at all material times the owner of a motor car registered as PB 7058, while the 1st defendant was, at the material time, the driver of the said motor vehicle. At the material time, the 1st defendant was driving motor vehicle registered as PB 7058 with the consent and permission of the 2nd defendant.
- [5] On or around the 23rd day of January, 2017 at about 12:45 p.m., the claimant was driving his motor vehicle registered as PG1469 along the Marisule Highway in a northerly direction. On approaching the Courts junction, the claimant signaled right indicating his intention to turn right into a minor road whereupon he brought the said vehicle to a stop and waited for an opportunity for the south-bound traffic to dissipate in order for him to execute his turn. The 1st defendant, who was also travelling north-bound behind the claimant's vehicle registered as PG1469, in motor vehicle registered PB 7058 rear-ended the claimant's vehicle, causing the said vehicle to spin out of control before coming to a rest.
- [6] The claimant's vehicle was completely written off as a result of the impact of the said collision. The claimant lost the use of his vehicle as a result which caused him to acquire a rental vehicle for his mobility.
- [7] On the 23rd day of January, 2017, the day of the accident, the claimant was taken to the Tapion Hospital and was examined by Dr. Zalika Paul. It is to be noted that the claimant was discharged on the same day and given analgesia with no need for follow-up.
- [8] The claimant did not provide any material evidence as to the value of the motor vehicle PG 1469 prior to the accident. However, a valuation report dated the 25th of January, 2017, submitted on behalf of the claimant stated that **"due to the extent of the damage to the complete rear body, rear chassis, twist to the left side of the roof and trunk"**. The valuation report which was

prepared and presented by a Mr. Matthew Emmanuel of Kell's Auto Body & Repair Shop, Bisee, Castries, Saint Lucia, also further stated that a total was recommended.

[9] It was unfortunate that, the valuation report of Mr. Matthew Emmanuel did not delve further into what were his considerations for his aforesaid determination to say that the vehicle was "totalled"; his valuation report is devoid of reason to determine the vehicle a complete loss.

[10] The Court was however also not presented with any uncontroverted evidence of value from Mr. Matthew Emmanuel. The amount given by the valuator is as irreconcilable as day is from night, especially in light of the traffic report which was tendered by the claimant on his claim, and therefore, it now falls to the Court to assess the quantum it should award in the circumstances.

The Claimant's Case

[11]The claimant seeks damages for negligence. He asserts that the defendant, Ms. Jaceline St. Martin was negligent in that she:

- a. Drove too fast;
- b. failed to brake, swerve or otherwise maneuver her vehicle so as to avoid the collision;
- c. failed to keep a safe distance behind the claimant's vehicle;
- d. failed to heed the presence of the claimant's vehicle on the road;
- e. failed to keep a proper look-out for the claimant's vehicle.

[12] As a consequence of this accident, the Claimant indicated that he sustained the following injuries:

- i. pain due to disk herniation causing him to remain off his feet at various times.

The Particulars of Special Damages were set out as follows:

Value of Vehicle	\$18,337.31
Rental for 54 days	\$ 9,230.00
Wrecker's fee	\$ 400.00
Police Report	\$ 200.00
Vehicle's Estimate	<u>\$ 250.00</u>
TOTAL	\$28,457.31

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

- i. Whether the claimant is contributory negligent;
- ii. Whether the claimant is entitled to repairs to his vehicle or to be awarded a sum on a constructive total loss basis.
- iii. Whether the claimant can legitimately claim money from the renting of other vehicles.

Analysis & Findings:

Reasonable Care

[14] 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, 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 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.”

[15] 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.

[16] 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.

[17] In **Berrill v Road Haulage Executive** [1952] 2 Lloyd’s 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.”

[18] 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.

[19] I have carefully analyzed and examined the evidence and considered the relevant aspects of the submissions made on both sides and I have found areas in Mr. Romero’s evidence that raise concerns as it relates to his reliability and credibility as a witness.

[20] The significance of the medical report lies in the doctor’s assessment and treatment of the claimant’s injuries. That is direct evidence, in my view, and not what was reported as having been told to the doctor by the claimant regarding how the collision happened.

Contributory Negligence

[21] Contributory negligence does not mean breach of a duty to take care, but simply means careless conduct on the part of the person, usually the claimant, in failing to prevent or avoid the carelessness of the other person’s breach of duty to take care (**Charlesworth and Percy on Negligence, 9th Ed.** Para 1-10). Negligence depends on a breach of duty, whereas contributory negligence does not. Negligence is a man’s carelessness in looking after his own safety. He is guilty of contributory negligence if he ought reasonably to have foreseen that if he did not act as a reasonable, prudent man, he might be hurting himself (see **Jones vs. Livox Quarries Ltd.** (1952) 2 Q.B. 68).

[22] The submission of Counsel Mrs. Hinkson-Ouhla is that the traffic report stated that the claimant was unrestrained; which would suggest that the claimant was not wearing his seatbelt at the material time when the defendant’s motor vehicle collided with the claimant’s vehicle causing it to spin out of control before it came to a rest.

[23] It should be apparent to counsel for the parties that if the defendant’s negligence or breach of duty is established as causing the damage, the onus is on the defendant to prove that the claimant’s

contributory negligence was substantial or material on a balance of probabilities (per Lord Wright in **Caswell v Powell Duffryn Associated Collieries Ltd.** [1940] A.C. 152 at page 172).

[24] In the case of **Pratt v Bloom** 1958, Times 21 October, Div. Court found at page 85 in **Bingham and Berryman's Personal Injury and Motor Claims Cases** 10th edition, it was held that the duty of a driver changing direction is (1) to signal and (2) to see that no one is incommode by his change of direction, the duty being greater if he first gives a wrong signal and then changes it.

[25] The question the court must ask for the purpose of deciding whether or not contributory negligence is established, is whether the facts which were known by the claimant would have caused a reasonable person in the position of the claimant, to realize the danger. In order to establish contributory negligence on the part of the claimant, it is essential for the respondent to establish that the injury to the claimant was partly caused by her omission to take that degree of care, which the circumstances of the case required. In **Caswell v. Powell Duffryn Associates Collieries Ltd** 1940 AC 152, Lord Wright said that it was a question of degree of care which the circumstances required the claimant to take; and the court would have to draw a line “**where mere thoughtlessness, or inadvertent or forgetfulness ceased and where negligence began.**”

[26] All that is necessary is to prove to the satisfaction of the court that the injured party did not, in his own interest, take reasonable care of himself and so contributed, by his lack of care, to his own injury. Where a person is part author of his own injury, he cannot call on the other party to compensate him in full: see **Nance v British Columbia Electric Ry Co. Ltd.** 1951 AC 601, at p 611 and **Associated Industry Ltd. V Kumar Ragnauth**, 1982 W.I.R. 249 at p 251.

[27] I appreciate that in the consolidated cases of **Bakeries and Victor Williams v. Pauline Williams** 1968 JLR page 49 held: A motorist was required to exercise reasonable care. He was not required to be a perfectionist. However, as propounded in **Lang v London Transport Executive** 1959 WLR PS 1168 at page 1176 by Havers J.

“If the possibility of the danger emerging is reasonably apparent, then to take no precautions is negligence, but if the possibility of danger emerging is only a mere possibility which would never occur to the mind of a reasonable man, then there is

no negligence in not having taken extraordinary precautions (Fardon v Har Court Rivington 1932 146 LT 391, 392)”

- [28] Central to my decision in assessing the level of contributory negligence is the fact that this was not a “dilemma case” in which the claimant’s change of direction was so sudden that the defendant had to act instinctively for her own preservation. The 1st defendant had sufficient time to react by applying her brakes but failed to do so. Although the claimant was the driver of the vehicle changing directions, I see no basis for a finding that he had a greater duty of care on the facts as found by the Court. I find, however, that the 1st defendant driver was far more to blame than the claimant driver and that her share of responsibility and culpability was far greater. I find the defendant 95% to be blamed and the claimant 5% in relation to not wearing a seat belt.
- [29] However, I do not agree with Mrs. Hinkson-Ouhla that the global sum should be reduced by 20% in this case because of the negligence of the claimant in not wearing a seat-belt, I find that the subsequent collision of the motor vehicles would not have been a direct or even indirect result of the claimant not wearing his seat-belt but is attributable to the breach of the duty of care owed by the 1st defendant in this case.
- [30] The partial defence of contributory negligence on the part of the claimant not wearing a seat belt at the material time of the collision of the said two motor vehicles is only consequential to the issue of personal injury sustained by the claimant. This issue will be dealt with a little further on in this assessment of damages.
- [31] In order to succeed in the aforementioned defence, the 1st defendant must prove a causal connection between the claimant’s contributory negligence of not wearing a seat-belt and the 1st defendant’s damage. The scope of responsibility tended to encapsulate what the notion of causation is all about (see **Rahman v Arearose Ltd.** [2001] QB 351). It is generally accepted that in so far as motor vehicular accidents were concerned, a road user owes other road users a duty to exercise due care; and this is so regardless of the Highway or Road Codes that regulate the manner of driving on the roadways.

General Damages & Special Damages

[32] It has always been the law that Special Damages must be specifically pleaded and in fact rule 8.3(5) of the Civil Procedure Rules, 2000 (the CPR, 2000) mandates a Claimant to include or attach to the Claim Form or Particulars of Claim, a schedule of any special damages claimed. In respect of General Damages there is no such principle of law nor is there any similar provision in the CPR. General Damages are presumed to flow from the wrong inflicted and so need not be specifically pleaded. This, however does not mean that a party should not set out their case so that the other side is aware of what they have to meet. The case **McPhilemy v Times Newspapers Ltd.** and others [1999] 3 All ER 775 has been cited in many Jamaican cases dealing with how pleadings ought to be drafted in accordance with the CPR, and provides a useful guide as to how to approach such pleadings which I have set out below:

“The need for extensive pleadings include particulars should be reduced by requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party’s witness statement will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular, they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader. However, a party is required to mark out the parameters of their case.”

[33] In relation to the general damages, the claimant relied on the medical report of Dr. Kazan Pierre-Minvielle. Dr. Pierre-Minvielle examined the claimant on the 25th day of May, 2017 and reported that the claimant was the unrestrained driver of a motor vehicle involved in an accident the morning of presentation to the hospital. The claimant complained of pain to his left lower back, it was noted by the examining doctor that the patient had a history of disc herniation. The claimant was brought in by ambulance on a spine board, with c-collar, unsure of loss of consciousness at time of incident. He was discharged on analgesia with no need for follow-up. It is also to be noted from the

medical report that the claimant had significant past problems associated with hypertension.

[34] At this juncture, I must register my agreement with Counsel Hinkson-Ouhla that despite the claimant's complaint of pain and sick leave for an extended period, no medical evidence or medical certificate loaned support to that claim. Furthermore, I cannot ignore the medical report which indicated that the claimant had recovered from his injuries. This position was highlighted by Dr. Pierre-Minvielle, the examining physician in his statement that, "Recommendation: Patient discharged on analgesia with no need for follow-up.

[35] The important consideration in making an award is the need to arrive at a figure which will compensate the claimant for the challenges which confront him, and not only for the injury sustained and its resultant pain and suffering. Campbell JA in **Beverley Dryden v Winston Layne** SCCA No 44/87, delivered 12 June 1989, elucidated the reasons. In so doing he relied on the oft-cited passage of Lord Reid in **H West & Sons Ltd and Another v Shephard** [1964] AC 326 at pages 340 and 341. He said:

"This is so, because a physical injury without consequences would attract only a nominal award. It is the consequence of the disability which really measures the loss for which the disabled is to be compensated. There is authoritative support for this opinion in H West & Son Ltd v Shephard (1964) A.C. 326 where Lord Reid at Page 340 – 341 had this to say: '...The man whose injuries are permanent has to look forward to a life of frustration and handicap and he must be compensated, so far as money can do it, for that and for the mental strain and anxiety which results... There are two views about the true basis for this kind of compensation. One is that the man is simply being compensated for the loss of his leg or the impairment of his digestion. The other is that his real loss is not so much his physical injury as the loss of those opportunities to lead a full and normal life which are now denied to him by his physical condition – for the multitude of deprivations and even petty annoyances which he must tolerate. Unless I am prevented by authority I would think that the ordinary man is, at least after the first few months, far less concerned about the dislocation of his normal life. So I would think that compensation should be based much less on the nature of the injuries than on the extent of the injured

man's consequential difficulties in his daily life'."

[36] There are established principles and a process to be employed in arriving at awards in personal injury matters. In determining quantum, judges are not entitled to simply "pluck a figure from the air". Consistent awards are necessary to inspire confidence in the justice system, and litigants as well as the public are entitled to know the reasons for the decisions of the court.

[37] The purpose of an assessment is to endeavour to compensate the claimant. This exercise is an attempt at restoring the claimant to the position he would have been in, had he not suffered the injuries. In light of the aforementioned lack of medical evidence to prove the claimant's claim of pain and suffering, the Court makes no award.

Write-off of Motor Vehicles

[38] **Write-off is a term commonly used when the insurance industry determines your vehicle to be a total loss. In other words, the cost to repair your vehicle after a collision is more than its value after subtracting the recycle or salvage value. Write-off of a motor vehicle in insurance language alludes to a vehicle that is too badly damaged to be repaired to a standard that is considered safe for road use. These vehicles are suitable only for use as parts or scrap metal. A repairable write-off refers to a vehicle that technically can be repaired, but it is decided it would be uneconomical to do so. This usually occurs when the cost of repairing the car is higher than its market or economic value.¹**

[39] There was a dearth of evidence on both sides as to the consideration or economic value that they would assign in writing-off or not writing-off the Honda Fit vehicle with registration no. PG 1469. The claimant's loss adjuster, Mr. Emmanuel, only stated in his damage report that taking into consideration the severity and extent of damage sustained, the high cost of parts and their unavailability, it was recommended that the said vehicle be deemed a write-off. However, there is no value or economic costs to assist the Court any farther. That is, there is no quantitative evidence that shows the extent to which the salvage value as a written-off vehicle, plus the cost of repairing the vehicle for use on a road would be more than:

- (i) the market value of the vehicle before the accident; or

¹ Insurance Law Dictionary

(ii) the sum the vehicle is insured for.

[40] **An appraiser calculates how much your undamaged vehicle was worth immediately prior to the collision and compares the repair costs to your vehicle's actual cash value, less its salvage value. They then determine if repairs are feasible.**

Appraisers use several factors to help determine a vehicle's value. Primarily:

(i) **The year, make, model, and odometer reading.**

(ii) **The type of engine, options, and overall condition, noting unrelated damage and aftermarket equipment added to the vehicle; careful consideration determines if these additions really add value to the vehicle.**

(iii) **Independent market survey reports, indicating sales of similar vehicles of the same year, make and model.**

(iv) **The value listed in industry-standard publications, websites like AutoTrader.ca, and dealer and classified ads.²**

The Court is therefore left in the unenviable position to assess the quantum of damages in light of the sparse evidence that has been presented on both sides.

[41] The learning is clear that a claimant cannot insist on repairs at the defendant's expense if it would be more economical to purchase a similar vehicle on the open market. It is only where there is no substitute available or no other reasonable alternative that a claimant would be entitled to have his vehicle repaired. This was made clear by Widgery LJ in **Harbutts Plasticine Ltd v Wayne Tank and Pump Co Ltd**³ who noted, "If the article damaged is a motor car of popular make, the [claimant] cannot charge the defendant with cost of repair when it is cheaper to buy a similar car on the market. On the other hand if no substitute for the damaged article is available and no reasonable alternative can be provided, the [claimant] should be entitled to the cost of repair."

[42] The Court finds that the claimant, on a balance of probabilities, has provided some cogent evidence to support his claim, though I do not accept that the vehicle should have been written-off based on what was presented by the appraiser and will adjust the sums claimed accordingly. Equally, the 1st defendant did not present to this Court a quantitative basis on which the claimant's

² Black's Law Dictionary 8th Edition

³ Harbutts Plasticine Ltd v Wayne Tank and Pump Co Ltd [1970] 1 QB 447.

claim should be rejected and reduced and why they should have gone with the option of repairing the vehicle over that of writing-off.

[43] Generally, the practical way that the courts have calculated this diminution in value is to ask how much would be the reasonable cost of replacement in a write-off scenario as against putting the chattel back in the state it was in before it was damaged. It was stated that, in general this is a convenient practice which the courts should continue to follow. Only if the sum claimed appears to be clearly excessive will the court be justified in investigating whether that sum exceeds the cost that the claimant would have incurred in replacement of the vehicle versus having the repairs carried out by a reputable repairer.

Loss of Use

[44] 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) 17 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.

[45] In **Headlev 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.

[46] 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 Dounnath Deonarine & Ryan Deonarine**⁴ that:

"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."

[47] In **Owen Tharkur v Cleveland Williams** Common Law Suit No. T 1 18/84 delivered on the 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."

[48] The claimant has failed to show by way of his affidavit that he had shown any proof that he secured a vehicle for hire or rent and in light of that, he has not shown to this Court that he had suffered from a substantial loss of the use of his motor vehicle. It is my considered view and I so hold, that an overall period of twelve (12) weeks for loss of use would be reasonable in the present circumstances. He is therefore entitled to a further sum of \$ECD3, 500.00.

[49] I also accepted that once special damages are averred and proved it will be awarded. In the instant case, it was not. In any event, and in the face of a lack of documentary evidence, his claim

⁴ Lynette Hughes v Dounnath Deonarine & Ryan Deonarine HCA S234 of 1998.

is deemed unreasonable and unjustifiable and not a charge for the defendants: see Pearson LJ comment in **Darbshire v Warran**⁵ 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.”

[50] I have also taken into consideration the estimate of approximately \$ECD18, 377.31 as the pre-accident value less the salvage value of \$ECD4, 000.00. It is only when there is some evidence before the court that the court can weigh the circumstances and say whether or not the evidence provided is reasonable and sufficient proof. However, I find that the sum claimed appears to be clearly excessive and cannot be justified and I also find that the sum exceeds the cost that the claimant would have incurred in replacement of the vehicle.

[51] The Court would therefore substitute the sum of \$ECD9, 000.00 which would take into account the year, make, model, and odometer reading of the 2003 Honda Fit vehicle in 2017.

[52] The claimant paid \$ECD1, 000.00 for hospital fees. Wrecking Service towed his car from the scene at a cost of \$ECD400.00. He paid \$ECD500.00 for the assessment of damage to his car conducted by the Loss Adjustors.

Orders

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

1. The Claimant is awarded general damages of \$ECD12, 500.00 made up of a nominal amount of \$ECD3, 500.00 to the Claimant for loss of use of his motor car;
2. The Claimant is awarded special damages of \$ECD3, 000.00 for the net value of his written-off motor car;
3. No award for pain and suffering;
4. The Claimant is awarded interest on the general damages at the rate of 6% per annum from the 20th day of September, 2017 to the 27th day of February, 2020;
5. The Claimant is awarded interest on the special damages at the rate of 3% per annum from the 20th day of September, 2017 to the 27th day of February, 2020.

⁵ *Darbshire v Warran* [1963] 3 All ER 310.

**Ricardo Sandcroft
Master [Ag]**

By the Court

Registrar