

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

Claim No. SLUHCV2018/0394

BETWEEN:

**[1] ST. LUCIA DISTILLERS LIMITED
[2] CORNELIUS EDMUND**

Claimants

and

SIMONE COX

Defendant

APPEARANCES:

Mr. Alvin St. Clair for the Claimants

Mr. Callistus Vern Gill for the Defendant

2020: February 17;
April 28.

JUDGMENT

[1] **PHILLIP J. [Ag]:** The claim arises out of a motor vehicular collision which occurred on Sunday, 30th April, 2017 sometime after 07:00 am on the Marigot Highway at the Coolie Town intersection. The second claimant ("Mr. Edmund") was driving a panel van, registration number TG5565 ("the van"), owned by the first claimant ("the Company") along the Marigot Highway in the southerly direction towards Anse La Raye; while the defendant ("Mrs. Cox") being the owner and driver of a Mitsubishi Lancer motor car, registration number PD321 ("the car"), was driving from the Coolie Town feeder road unto the highway turning right in a northerly direction towards Castries.

- [2] The claimants seek to recover from Mrs. Cox special damages in the sum of \$75,975.00 for damage to the van together with interest thereon at the rate of 6% per annum and costs. On the other hand, Mrs. Cox disputes the claimants' claim and seeks to recover from them special damages in the sum of \$22,179.00 for damage to the car and medical related expenses, general damages for personal injuries, interest and costs.
- [3] The court notes, at the outset, that the amounts claimed as special damages by either party have not been challenged by the other party apart from a denial of liability by both of them as to the cause of the collision. In fact, both parties stipulated that the documents annexed to the respective witnesses' statements were accepted as evidence before the court. Consequently, only the issue of liability for the cause of the collision needs to be determined from which will flow the amounts claimed by the respective parties for special damages.
- [4] The principal issue for determination by the court, therefore, is whether Mr. Edmund or Mrs. Cox caused the collision, or whether they both contributed to the cause of the collision and, if so, to what extent.

Evidence of the Collision

- [5] Four witnesses were called at the trial. The claimants called three witnesses: Mr. Cyrus Faulkner, security manager of the Company; Mr. Jason King, the financial comptroller of the Company; and Mr. Edmund, while Mrs. Cox gave evidence on her own behalf. It is not disputed that neither Mr. Faulkner nor Mr. King was present at the time of the collision and Mr. King offers no evidence in respect of the cause of the collision.
- [6] Mr. Faulkner, however, purports to give evidence as to the cause of the collision and concludes that from the information he received, it appears that Mrs. Cox failed to stop at the junction to ensure that the road was clear before exiting from the minor road (Coolie Town feeder road) onto the major road (Marigot Highway) and as a result the accident occurred resulting in serious injuries to Mrs. Cox and

extensive damage to both vehicles¹. The court accepts the submission of Mr. Gill that the evidence and conclusion of Mr. Faulkner largely comprise of hearsay which must be discounted and as such offers little, if any, assistance to the court in determining the cause of the collision.

[7] The evidence as to the collision coming from Mr. Edmund's witness statement is that:

"3 On Sunday 30th April, 2017 about 7:15 am I was driving van no. TG 5565 travelling along Marigot High Road proceeding towards Anse La Raye to collect a generator There were goods on the van which I had to convey to Rodney Bay for a boat a boat ride ... organized by St. Lucia Distillers.

4 I took the van from the compound of St. Lucia Distillers, situate at Roseau and was driving along the Marigot road heading to Anse La Raye. Whilst driving along the Marigot road, near Coolie Town junction, I saw a black car driving along the Coolie town road moving towards the high road.

5 I continued to drive thinking that the vehicle would stop because since I could see it, I assumed that the driver of the vehicle coming towards the highroad could also see my vehicle.

6 The vehicle continued driving without stopping. I began to toot my horn but the vehicle came out of the junction and swung right in front of me. I applied brakes but because I did not suspect that the car would be driven onto the highway, in my way, I collided with the car. I do not know exactly how fast I was driving but I was about the speed limit say 40 miles." (underlining added)

[8] In cross-examination, Mr. Edmund admitted that in fact he took the van from the Company's compound and headed north to Rodney Bay for the boat ride that was scheduled for about 10:00 am, but on stopping at Marigot to collect the generator was informed that the generator was at Anse La Raye and had to turn around and head back to Anse La Raye. Mr. Edmund did not accept the suggestion that he

¹ See paragraph 14 of witness statement at page 27 of Trial Bundle.

was rushing back to Anse La Raye to collect the generator and get to Rodney Bay in time for the boat ride – he stated he had enough time. He acknowledges that he has been driving for the Company for about 11 years and the van, which he had driven before, was about one (1) year old and the brakes were good. He also acknowledged that he first saw Mrs. Cox's car about 118 feet before the collision; that a brake impression of 114 feet 6 inches was left by his van; and that the van travelled a distance of 52 feet after the point of impact of the collision. Mr. Edmund denies that he was speeding or that he was driving so fast that he could not stop the vehicle. However, he was unresponsive as to the speed at which he was travelling and maintains that he cannot say at what speed he was travelling. Mr. Edmund accepted that as a driver he does have to make accommodations for other drivers on the road.

[9] On the other hand, in relation to the collision, Mrs. Cox in her witness statement states:

- "6. I remember Sunday the 30th April, 2017 at about 6:55 a.m. That morning I left my home in Vanard to attend mass at the Cathedral of the Immaculate Conception in Castries. I passed through the Belair/Coolie Town feeder road and got to the Coolie Town/Marigot intersection about 7:05 a.m.*
- 7. I had two (2) passengers on board, Marla Byron and her brother Murphy Bryon whom I had given a ride from Vanard.*
- 8. I stopped at the intersection and looked right then left. I saw that the road was clear. As soon as I started turning onto the highway I saw this van coming towards me with speed.*
As I had already started moving I accelerated to get into the left lane which would be the proper lane for me to head to Castries.
- 9. The next thing I know is that the van slammed into the right side of my vehicle." (underlining added)*

[10] Mrs. Cox in cross-examination acknowledges that she has been driving for a number of years but could not remember how many years it was - she indicated that she has been having memory lapse since the incident. She also acknowledged that she is familiar with the area; that the Marigot highway is a straight stretch of road on both sides of the Coolie Town intersection so that you can see vehicles in a distance; and that she appreciates it was her duty to stop at the intersection. Mrs. Cox maintained throughout her cross-examination that she did stop at the intersection, looked, saw no vehicle on stretch of the highway and it was then that she moved onto the highway. When pressed by Mr. St. Clair that in spite of what she says there was in fact a vehicle hence the collision, she proffered that higher up the highway there is a little bend and the vehicle may have been there. She indicated that she cannot say the distance to the bend but it is a good distance away, and insisted that she did not see any vehicle until when she moved then she saw the van. She stated that she had never seen a vehicle move so fast, it was travelling more than 80 mph, it was terrific speed. Mrs. Cox denied the suggestion that she was distracted because she was having a conversation with the passengers in her car and that she did not see the van because of her eye problem - she responded that she can see, she just cannot read small prints.

[11] Unfortunately, neither the passengers of Mrs. Cox's car nor the police officer, PC 228 James, who investigated the collision were called as witnesses at the trial. They may have been helpful as independent witnesses to clarify certain aspects of the case. However, the traffic accident report of the collision by Royal Saint Lucia Police Force dated 3rd August, 2017 ("the Accident Report") that was admitted into evidence and relied on by both parties will prove very helpful in assessing the cause of the collision and will be referred to in some details later in the judgment.

Discussion

- [12] The starting point is the relevant Articles of the **Civil Code of St. Lucia**², which states:

“985. Every person capable of discerning right from wrong is responsible for damage caused either by his act, imprudence, neglect or want of skill, and he is not relievable from obligations thus arising.

986. He is responsible for damage caused not only by himself, but by persons under his control and by things under his care.”

- [13] There is, however, no issue in this case as to the capacity of either of the parties to discern right from wrong nor that of the Company’s vicarious liability for the action of Mr. Edmund. Also, there is common ground between the parties on the well settled principle of law that all drivers of motor vehicles have a duty to exercise due care when driving on the road that is encapsulated in the often cited passage of Rawlins, J. in **Cheryl Edwards, Administratrix of the Estate of Janique Lewis v Ethel Mills**³, thus:

“Drivers of motor vehicles are under a duty to exercise due care on the road. They are expected *inter alia* to determine what other users of the road are doing. They are expected to manoeuvre their vehicles in order to prevent and avoid accidents. ... They must exercise due care and attention at all times. This might at times require a driver to stop in order to have a proper look out so as to determine whether it is safe to proceed or to overtake another vehicle. It all depends upon the circumstances including the weather, visibility, the number of vehicles on the road, the presence of pedestrians and the state of the road.”

And in **Halsbury Laws of England**⁴ in the following terms:

“When two persons on the highway are so moving in relation to one another as to involve risk of collision, each owes to the other a duty to move with due care, and this is true whether they are both in control of vehicles or both proceeding on foot, or whether one is on foot and the other controlling a moving vehicle. ... The duty is to use such care as is reasonable, and where a driver is faced with the sudden emergency he can only be expected to do that which an ordinary reasonable man would do. The duty is owed only to such persons as are within the area of potential danger and to whom the defendant could reasonably foresee the risk of injury if he or his employee failed to exercise care.”

² Cap. 4.01, Laws of Saint Lucia.

³ Claim No. ANUHCv1998/168

⁴ 4th Ed. Vol. 34 para. 44

Claimants' case

- [14] Mr. St. Clair contents and submits on behalf of the claimants that Mrs. Cox was clearly negligent by her failure to look and or appreciate the presence of the van approaching on the highway, especially with the extent of visibility of the highway in either direction from the intersection. That this amounted to an exercise of poor judgment on her part in entering the highway at the time she did and a failure to heed clause 11 of the Driving Code⁵ that states:

“The driver of a motor vehicle or trailer shall not cross a road or turn in a road or proceed from one road into another road ..., when unable to do so without obstructing any other traffic on the road.”

In contrast, Mr. Gill's position is that the evidence adduced by the claimants does not make out a case that Mrs. Cox drove her car negligently as alleged or at all.

- [15] It is apparent (as may be inferred from the evidence of Mrs. Cox at paragraph 8 of her witness statement quoted and underlined at paragraph [9] above and her response in cross-examination at paragraph [10] above) that the van would have come into visual range from the little bend up the highway after Mrs. Cox would have looked right then turned and looked left, but unfortunately did not look right again before moving off by which time the van was approaching within sight, and she accelerated to get into the left lane of the highway in the northerly direction. Accordingly, I do not believe that Mrs. Cox is being untruthful in her evidence when she insists that she stopped and looked but did not see the van.

- [16] This in my view, however, was indeed a lapse in judgment on Mrs. Cox part because the measurements in the Accident Report indicate *inter alia* that: the width of the highway at the point of impact was 21 feet 3 inches; the point of impact was 11 feet to the left hand side of the highway in a northerly direction; and that Mrs. Cox car would have travelled only 10 feet 3 inches into the highway even after accelerating. Clearly, the collision occurred in or about the centre of the highway so had Mrs. Cox stopped even at the time of seeing the van approaching

⁵ The schedule to the Motor Vehicles and Road Traffic (Driving Code) Regulations, Cap. 8:01, Laws of Saint Lucia.

with terrific speed, as she asserts, it is very likely that the collision could have been avoided. Consequently, I agree with the submission of Mr. St. Clair that Mrs. Cox action on that faithful morning amounts to negligence which led to the collision.

- [17] The court notes for completeness that the claimants have pleaded and argued the doctrine of *res ipsa loquitur* but in light of the position reached above it is not necessary to have further consideration of this doctrine. Similarly much moment was made of the fact that the Accident Report indicated that the police intended to charge Mrs. Cox while no mention was made of charging Mr. Edmund; however, I am not persuaded that that fact assists the claimants because as was stated by Ellis, J. (para [16]) in **Harold Malone v Kirk Phillips**⁶:

“It is clear that the decision to charge one and not the other person with the offence of careless driving is usually at the discretion of the police and the mere fact that one of the two drivers is charged does not necessarily mean that the other driver is not liable at all. The issue of contributory negligence is always open to the party despite the conviction.”

Defendant's case

- [18] There remain, therefore, the issues of Mrs. Cox defence of contributory negligence by Mr. Edmund and her counterclaim that it was in fact his negligence that caused the collision. In this regard Mr. Gill contends and submits that the speed at which Mr. Edmund was driving was excessive, dangerous and made it impossible for him to stop, slowdown, swerve or in any way control or manage the van, and this is what caused the collision or substantially contributed to it. He submits that the measurements in the Accident Report support the defendant's contention and that at its highest Mr. Edmund evidence is unreliable, if not untrue.
- [19] Mr. St. Clair's position is that reliance on the brakes impression of the van as evidence of speed should not be seriously considered because there are too many variables, which need to be taken account of such as: the weight of the van, whether it had load, the tires of the van, whether the road had any sand or dirt, etc. but this evidence was not placed before the court. Mr. St. Clair submits there is no evidence of fast driving by Mr. Edmund, that the speed limit was exceeded by him

⁶ Claim No. BVIHCV2015/0004

or that he is being charged or recommended for any such charge by the police. In any event, he submits that fast driving without more is not negligence because Mr. Edmund only did what a reasonable man in the circumstances would have done and applied his brakes, where it was the defendant that created an emergency situation. Mr. St. Clair concludes that there is nothing to suggest negligence on the part of the claimants.

[20] The measurements in the Accident Report (some of which is set out below) is indeed instructive in determining the issue of the speed of the van and possible negligence of the Mr. Edmund:

- distance of clear visibility from the van to the intersection: 215' 1"
- distance from where he first saw the car to the intersection: 118'
- distance where he first saw the car to point of impact: 108' 9"
- distance from where he first saw the car to start of brake impression: 41'
- length of the van's left brake impression: 114' 6"
- distance the van travelled after point of impact: 52'

[21] I do not agree with the submission of Mr. St. Clair in respect of the court's reliance on the evidence of brakes impression, for which he provided no authority. Equally, on the evidence before me, there is no indication that the brakes impression was as a result of anything other than that of the ordinary normal course of events. In the circumstances, the reasonable deduction from the above measurements is that the van was unable to stop even after applying brakes for 67 feet 9 inches (108' 9" minus 41') and having collided with the car. The van travelled a further 52 feet after the collision with an overall left brake impression of 114 feet 6 inches.

[22] This may be a useful juncture to state, having seen and heard both Mr. Edmund and Mrs. Cox under cross-examination, I am satisfied that Mrs. Cox was being forthright with her responses and on a balance of probability I prefer her evidence in the area where there is doubt or inconsistencies. I do not accept Mr. Edmund's evidence that he does not know how fast he was driving. His evasive answers and his unresponsiveness in cross examination as to the speed he was travelling at

coupled with the fact that he is a driver of over 11 years' experience and licensed to drive all categories of vehicles, I am satisfied that he was not being completely truthful to the court.

- [23] The position deduced above from the measurements and the evidence of Mrs. Cox that the van was travelling at a terrific speed which she estimated to be about 80 mph leads me to the undoubted conclusion that the van was travelling at an excessive speed and I so hold. Although the court accepts the submission of Mr. St. Clair that fast driving without more does not amount to negligence, in this case there is indeed more. The measurements show that the right brake impression of the van started 10 feet from the right side of the highway in a southerly direction and the point of impact was 11 feet from the said side of the highway, some 67 feet 9 inches from the start of the brake impression. This clearly suggests that Mr. Edmund did not or could not swerve or steer the van to avoid the collision. By his own evidence, Mr. Edmund saw the car from about 118 feet away approaching the intersection and assumed that it would stop so he continued driving and initially did nothing to slow or stop the van. I, therefore, find that Mr. Edmund was negligent in that he breached his duty of care to drive at a speed and in a manner that was safe in the circumstances and this contributed to the collision.

Apportionment of Negligence

- [24] Having found that both Mrs. Cox and Mr Edmund were negligent and that they are jointly responsible for the collision and the resultant damage caused, it is now for the court to determine the extent of their respective responsibility in accordance with the law as prescribed by the **Civil Code of St. Lucia** in Article 989D:

“(1) In this article,—

...

*“**fault**” means negligence, breach of statutory duty or other duty or other act or omission which gives rise to a liability in tort or would, apart from this article, give rise to the defence of contributory negligence.*

- (2) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks*

just and equitable having regard to the claimant's share in the responsibility for the damage."

- [25] Mr. St. Clair relies on **Phillips** case and a number of cases referred therein to support his submission that if any responsibility should be attached to Mr. Edmund for contributory negligence it should be in the region of 1% to 5%. It appears that the factual matrix as to the respective action of the claimant and the defendant in **Phillips** case may have been misconstrued, because it does not assist the claimants herein in relation to the issue of proportioning contributions.
- [26] In fact, reasoning as Ellis, J. did in **Phillips** case (paras 9 and 10), on the evidence of Mr. Edmund quoted and underlined at paragraph [7] above that he saw the car approaching the intersection and assumed that it would stop so he continued driving and initially did nothing to slow or stop the van, would have substantially and foreseeably increased the risk of the collision and serious damage and injury, if the car emerged from the intersection and it did. Mr. Edmund by his acts and omissions has contributed to the damage caused to the van, in that he failed to take reasonable care for his own safety and that of the van, bearing in mind (as he must) that other users of the road are likely to be negligent⁷.
- [27] Mr. Gill, on the other hand, contends that should the court find that Mrs. Cox contributed to the collision the extent of her responsibility should be 25% but in any event should not exceed 30%.
- [28] The court is unable to find favour with either counsel on this issue. I have considered the witness statements, the evidence of the witnesses and their demeanour in cross-examination, and the Accident Report and in my view both parties are responsible for the cause of the collision almost equally by the breach of their mutual duty of care as drivers of motor vehicles when driving on the road. Ultimately, though, I find that it was the act of Mrs. Cox entering the Marigot

⁷ Michael Francois v Ryan Richards, GDAHCVAP2013/0033 per Michel, JA. (delivered 1st June, 2018)

highway as she did that was the primary cause of the collision and for that reason I would apportion responsibility of 55% to her and 45% to Mr. Edmund.

Assessment of Damages

[29] As already noted at paragraph [3] above, the agreed position of counsel at the trial is that the witnesses' statements and the attached exhibits are all accepted and admitted into evidence. There was also no cross-examination of any witness in respect of the sums claimed by either party for special damages. Therefore, the court will award the sums claimed for which there are the supporting documentary evidence (invoices and or receipts) or other cogent evidence of loss and or expense.

Special Damages of the Claimants

[30] The claimants claim in their statement of claim for the following items of special damages:

- pre-accident value less salvage value of \$17,000.00	\$69,000.00
- insurance policy excess	\$ 5,225.00
- survey report	\$ 350.00
- loss of use for 7 days	<u>\$ 1,400.00</u>
Total	\$75,975.00

However, the evidence of Mr. King (paragraph 11 of his witness statement) supported by the survey report and the statement of release and discharge from the Company insurers confirm that the pre-accident value less salvage value (the diminution in value) of the van is in fact \$71,000.00, which is allowed.

[31] The claim for the insurance policy excess amounts to a double counting because, as I understand it, the insurance policy excess is the sum deducted by the insurance company from the value of the claim to be paid, which in the present scenario will be the diminution in value of the vehicle. Indeed, I find support for this position from the said statement of release and discharge from the Company insurers. This must be so because when one adds the salvage value, the diminution in value and the insurance policy excess this gives a value higher than

the pre-accident value of the vehicle, and to allow such a claim in my view will be contrary to the object of the award of damages - to compensate the victim for his or her actual loss. Accordingly, having allowed the diminution in value in the sum of \$71,000.00, the claim for the insurance policy excess must fail and is denied.

[32] The sum claimed for the survey report is substantiated by a receipt and so is allowed. However, the claim for loss of use is not substantiated by any evidence save for the bald statement of Mr. King (paragraph 10 of his witness statement) that “[t]he 1st Claimant was without a vehicle for a period of 7 days after the accident. I know that a reasonable daily sum for loss of use is \$250.00.” It is now well settled law that a party needs to specifically plead and prove special damages. There being no evidence that the claimants hired a replacement vehicle for 7 days as alleged, or at all, this claim is denied.

[33] In summary, the claimants are allowed special damages in the sum of \$71,350.00 which is reduced by 45% for Mr. Edmund’s contribution to the collision giving a net award of \$39,242.50.

Special Damages of Mrs. Cox

[34] Mrs. Cox claim for special damages are itemised as follows:

The car

- pre-accident value less salvage value of \$2,000.00	\$13,500.00
- towing cost	\$ 900.00
- insurance policy excess	\$ 1,500.00
- loss of use for 10 days	\$ 1,000.00

Medical Expenses

- bills of Tapon Hospital, Dr. Horatius Jeffers, Gablewoods Medical Diagnostic Clinic and People’s Discount Drugs	\$ 3,629.05
- medical report of Dr. Horatius Jeffers	\$ 650.00
- transportation cost	<u>\$ 1,000.00</u>
Total	\$22,179.05

[35] Like in the case of the claimants and for the same reasons, Mrs. Cox claims for the insurance policy excess and loss of use is not allowed. Moreover, Mrs. Cox also claims for transportation cost (to which I will return later) and so to allow loss of use and transportation cost will in my mind amount to double compensation. Documentary evidence has been provided in proof of the diminution in value of the car, the towing cost, the medical bills and the medical report, which sums are accordingly allowed.

[36] As it relates to the transportation cost, Mrs. Cox has not provided any proof of same, but Mr. Gill submits that this should not preclude the court from making an award of the nominal sum of \$1,000.00 for transportation from Vanard to Tapion and Gablewoods, Choc for medical care and assistance and relies on the case of ***Brentlie Charles aka Brentley Charles v Marcus Corridon***⁸ in support of his proposition. The court acknowledges the possibility of a nominal award for special damages in the absence of specific evidence in proof of same, but is of the view that there must at least be a basis for such an award. No evidence nor assistance was given to the court upon which it can make a determination of an award of even nominal damages for transportation cost - there is no indication for example as to the average cost of a trip from Vanard to Tapion and Gablewoods, Choc or how many trips were involve. The court will be left to speculate which it simply cannot do and as such the claim for the transportation cost is denied.

[37] Mrs. Cox is therefore allowed special damages in the sum of \$18,679.05 which is reduced by 55% for her contribution to the collision giving a net award of \$8,405.57.

General Damages of Mrs. Cox

[38] A claim was also made by Mrs. Cox for damages for the injuries sustained, pain and suffering, and loss of amenities. The evidence of Mrs. Cox in respect of her injuries, the management of same and her recovery was not challenged. Mrs. Cox at the time of the incident was 71 years of age and loss consciousness after the

⁸ Claim No. SVGHCV2002/0506 at para. 27

collision. The medical report of Dr. Jeffers indicates that Mrs. Cox sustained a closed (skin not broken over the broken bone) fracture of the lateral (outer) end of the left clavicle (collar bone), a bruised (contused) area of the inner aspect of the right knee with haematoma formation, and a laceration to the dorsum (top) of the left foot. The laceration was sutured and dressed, while the contusion was managed with ice and compression; and a broad arm sling to support the injured left upper limb was required during the healing phase of the left clavicle. Pain medication was required for the duration of the resolution of the pains and swelling of the injuries sustained.

- [39] Upon an examination by Dr. Jeffers 10 weeks post injury, Mrs. Cox was found to be ambulant without the use of any walking aids. The pain in her left shoulder was resolved with functional range of motion of the left shoulder joint and there was evidence suggestive of early union of the left clavicle fracture. The swelling of the knee continued to undergo resolution with full range of motion noted. The laceration was healed with a mildly raised scar but there was on going numbness of the dorsum of the left big toe.
- [40] In her witness statement (paragraphs 16 and 19) Mrs. Cox states that she experienced serious pain and discomfort over an extended period and was unable to perform the most basic activities of daily living like bathing, cooking, washing and driving for some time after the incident. She indicated that she continues to have problems with headaches and memory loss, and have some difficulties lifting heavy objects.
- [41] Mr. Gill refers the court to the seminal authority of ***Cornilliac v St. Louis***⁹ in respect of the factors to be considered in arriving at an award of damages for personal injuries, which are now well known and need not be repeated here. He relies on the case of ***Phillips v Morris***¹⁰ where the plaintiff, a stevedore, suffered a fracture of his left clavicle, injury to his left shoulder, superficial cuts to his face

⁹ 7 WIR 491 per Wooding, CJ.

¹⁰ A case out of Trinidad and Tobago reported in Dalys' Damages at page 120

and head and concussion; and was unable to work for approximately 15 weeks. In 1974 the plaintiff was awarded TT\$8,333.32 in damages of which TT\$3,000.00 were general damages. Mr. Gill submits that the plaintiff was awarded TT\$68,986.00 adjusted as of December 2010 and with a further adjustment to 2020 it is equivalent to EC\$32,000.00 and urges the court to be guided by this case. Regrettably, the copy of the case provided to the court does not indicate the adjustments as submitted by Mr. Gill nor was the court made aware as to how the adjustments were determined, and as such the efficacy of the authority is undermined.

[42] Mr. St. Clair, on the other hand, submits that the injuries suffered by Mrs. Cox would attract an award of \$10,000.00 to \$15,000.00 for pain and suffering. He based his position on the case of **Damon Dubois v Matthias Jerome and Natasha Joseph**¹¹ and cases mentioned therein. In **Dubois** case the claimant sustained soft tissue injuries of the left shoulder, chest, face and knees, and a grotesquely displaced closed commuted right distal radial fracture with dislocation of the right ulnar head. In 2012 he was awarded \$27,500.00 as general damages for the injuries, pain and suffering and loss of amenities. Mr. St. Clair reasoned that the injuries sustained in **Dubois** case were far more severe than those sustained by Mrs. Cox. I agree, but my own research reveals that this award was on appeal increased to \$50,000.00 by the Court of Appeal¹².

[43] I have considered the guidelines set out in **Cornilliac** case in assessing an award of general damages; the evidence of Mrs. Cox and in particular the medical report of Dr. Jeffers; and the authorities of **Dubois** case (as appealed) and **Ian Spencer v Ronald Greaves and Severn Williams**¹³. In **Spencer** case, the claimant, a fisherman, sustained contusion and abrasion to the right clavicular region; abrasion to the right knee; and an x-ray of the right shoulder revealed an un-

¹¹ Claim No. GDAHCV2011/0088

¹² *Damon Dubois v Matthias Jerome and Natasha Joseph*, Claim No. GDAHCAP2012/0006 (oral delivery on 14th June, 2012)

¹³ Claim No. SVGHCV2001/0047

displaced fracture of the middle one third of the right clavicle. He was later discharged with a sling to the right arm and analgesics. He was awarded general damages for pain and suffering in the sum of \$10,000.00 in October 2012.

- [44] While the injuries in **Spencer** case are more closely aligned with those sustained by Mrs. Cox, I am of the view that Mrs. Cox's injuries were more severe than that of Mr. Spencer. Also, a close reading of the judgement suggests that Mrs. Cox would have suffered greater pain, discomfort and inconvenience than Mr. Spencer. Accordingly, bearing in mind all the factors and circumstance considered above and the fact that the authorities are from 2012, I award Mrs. Cox general damages in the sum of \$25,000.00 for her injuries, and pain and suffering. This sum will be reduced by 55% for her contribution to the collision giving a net award of \$11,250.00.

Disposition

- [45] Both parties have claimed interest and costs in their respective claims, so I propose to treat with those matters briefly before making my final award. The **Civil Code of St. Lucia** in Article 1009A empowers the court on rendering judgment to make an award of interest for such period between the date of the cause of action and the date of judgment at such rate as the court thinks fit. I therefore award interest at the rate of 6% per annum to the claimants on the sum of \$39,242.50 from 30th April, 2017 the date of the collision to the date of judgment; and to Mrs. Cox on the sum of \$8,405.57 from 30th April 2017 the date of the collision to the date of judgment and on the sum of \$11,250.00 from 30th November 2018, the date of filing her defence and counterclaim to the date of judgment.
- [46] The court notes that the defence and counterclaim does not include a plea of setoff; but in a case like this where both sides have succeeded in their respective claims and damages are awarded on each side without either party emerging as the sole and clear winner, it is inevitable that there would be some form of setoff between the sums awarded. It follows that for ease going forward and in

furtherance of the overriding objective (Part 1 of CPR 2000 (as amended)) it is directed that the damages awarded are to be setoff between the parties and they shall each bear their own costs. I have chosen to deal with the issue of costs in this manner because the case is a fairly evenly balanced one on the issue of liability and the manner in which the case was conducted.

[47] I therefore make the following orders:

- (1) Judgment is entered for the claimants against the defendant in the sum of \$39,242.50 together with interest thereon of 6% per annum from 30th April, 2017, the date of the collision, to the date of judgment.
- (2) Judgment is entered for the defendant against the claimants jointly and severally in the sum of \$19,655.57 together with interest of 6% per annum on \$8,405.57 from 30th April 2017, the date of the collision to the date of judgment; and on \$11,250.00 from 30th November 2018, the date of filing the defence and counterclaim, to the date of judgment.
- (3) The judgment sum awarded against the claimants is to be setoff against the judgment sum awarded against the defendant.
- (4) No order as to costs.

Justice Rohan A. Phillip [Ag]
High Court Judge

By the Court

Registrar