

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV2016/0472

BETWEEN:

LISA FRANCIS

**ALISSA RICHARDS (*A Minor*)
By LISA FRANCIS her Next Friend**

**DAVID RICHARDS (*A Minor*)
By LISA FRANCIS her Next Friend**

Claimants

and

IVOR GORE

1st Defendant

RAWLE CHARLES

2nd Defendant

APPEARANCES:

Mr. Loy L. A. Weste and Mrs. Lisa John- Weste for the Claimants
Mr. Lawrence Daniels for the 1st Defendant

2019: December 3
2020: April 28

ORAL JUDGMENT

1. **ROBERTSON, J:** On 5th May 2016, at around 3:15 p.m., the first claimant [Lisa Francis] was driving her beige Toyota Corolla motor vehicle with Registration Number A18834 [hereinafter "A18834"] from the Piggott's Main Road across the Sir Sydney Walling Highway to an unpaved by-road and her motor vehicle became involved in a motor vehicle accident. These proceedings were instituted by the claimants alleging that the defendants were jointly and severally liable in negligence and the claimants sought damages and loss which the claimants contend arose as a result of the accident.
2. The claim against the second-named defendant was settled and discontinued and the proceedings proceeded against Ivor Gore. Mr. Gore in his defence, denied that he was involved in a vehicular collision with the vehicle driven by Ms. Francis, denied negligence and denied that he is liable for any loss or damage which may arise as a result of the collision on the 5th May 2016.

3. The matters for determination by this court are:
 1. Whether a vehicle driven by Mr. Gore collided with the vehicle of the Ms. France on the day in question.
 2. If item 1 is determined in the affirmative, whether Mr. Gore is liable in negligence for the collision.
 3. If Mr. Gore is determined to be liable, what is the appropriate compensation payable by Mr. Gore to the claimants.
4. It is to be noted that Mr. Gore has not raised in his defence the matter of contributory negligence.

Evidence

5. Ms. Lisa Francis, her daughter, Ms. Alissa Richards, Mr. Cornelius Samuel, Constable Kendel Shillingford, Mr. Joshua Lynch and Mr. Kevin Simon gave evidence on behalf of the claimants. Dr. Deepraj Gaekward, a Consultant Orthopaedic Surgeon testified and provided an expert medical report dated 7th June 2018 in relation to the injuries sustained by Ms. Francis as a result of the motor vehicle accident.
6. Mr. Ivor Gore gave evidence on his own behalf.

Ms. Lisa Francis

7. The evidence of Lisa Francis is that she was driving her vehicle proceeding from Piggott's Main Road across Sir Sydney Walling Highway onto an unpaved by-road. The evidence of this witness is that prior to proceeding across the Highway her vehicle came to a complete stop as she assessed when it was safe to proceed. She indicated that when two-thirds of the body of her vehicle was on the by-road, Mr. Ivor Gore while travelling West to East along the Highway so handled his vehicle [A43010] that it collided with the front of the claimant's vehicle which was off the Highway and on to the by-road¹. According to Ms. Francis, the strike to her vehicle was so forceful that it swung her vehicle back into the line of traffic on the Sir Sydney Walling Highway and blew out her left front tire. This collision having pushed her vehicle into line of traffic on the Highway, her vehicle was placed in the path of the second named defendant's vehicle which then struck her vehicle, causing her vehicle to be pushed off the road on top of boulders at the side of the road². At Paragraph 14 of her Witness Statement, Ms. Francis indicated that:

"I could not do anything to avoid the collision. The first vehicle that struck my car came onto the by-road after I had sufficiently cleared the Sir Sydney Walling Highway, striking my car and pushing my vehicle back into the main line of traffic on the Sir Sydney Walling Highway. As a result, my car was struck on the right side by the second vehicle driven by Rawle Charles."
8. At the time of the accident the claimant's daughter, Alissa Richards, was seated in the front passenger seat, and the claimant's son, David Richards, was seated on the left side in the back of the vehicle.

¹ Witness Statement of Lisa Francis filed on 12th January 2018, para. 8.

² Id. paras. 9 to 11.

9. As a result of the collision, Ms. Francis describes that her legs were trapped under the steering wheel in the vehicle until she was assisted out with someone's use of the 'jaws of life' some 45 minutes later. Ms. Francis gives further evidence of the trauma she experienced at the time of the accident and that she feared for her life and the lives of her children. The account of her hospitalization, pain and suffering will be addressed later in this decision.
10. On cross examination, Ms. Francis again indicated that she gave way to the vehicles which were traversing the Sir Sydney Walling Highway, and she stopped at the junction before crossing Piggott's Main Road across to Sir Sydney Walling Highway into the by-road. She stated that she had already crossed the Sir Sydney Walling Highway when the vehicle driven by Mr. Gore struck hit her vehicle

Alissa Richards

11. Ms. Francis's daughter, Alissa Richards was in the vehicle along with her brother, David Richards as Ms. Francis was driving her children from school. Alissa Richards, although seated in the front passenger seat at the time of the collision indicated that she did not see the accident as she was distracted as she was eating some vanilla ice cream. Upon the impact of the vehicles the ice cream splattered all over her glasses and the windshield. She further stated that a few seconds later, another vehicle hit her mother's vehicle very hard³. Alissa Richards sustained a scratch on her leg which she described hurt her 'a lot'. She also accounts that she assisted her mother after her mother was discharged from the hospital.

Constable Kendel Shillingford

12. Constable Shillingford, the investigating officer, visited the scene of the accident on the day in question. As a result of having visited the scene of the accident, after conducting interviews and otherwise having investigated the accident this witness determined that the first impact to Ms. Francis' vehicle [A18834] came from Mr. Gore's vehicle. He further stated that, *"motor vehicle A18834 was pushed back in the middle of the road from the first impact, and that the front part of the vehicle was already on the dirt road heading south towards Gunthropes when it was hit by Mr. Gore's vehicle and the impact caused Motor Car A18834 to roll backwards in the middle of the road where it was struck by Motor Car A24579⁴."*
13. The evidence of this witness was clear and compelling.

Joshua Lynch

14. During the relevant period Joshua Lynch was employed at T's Tyres located on Sir Sydney Walling Highway. On the specific day of the accident Mr. Lynch was at T's Tyres and indicated in his evidence that he heard a loud "bang", he looked along the street and saw the vehicle belonging to Ms. Francis on the end of the pond on boulders. Mr. Lynch noted that he observed a black "Infiniti jeep" drive past the tire shop then reverse to the shop (T's Tyres) where he was working. Joshua Lynch observed that one of the tires of the black "Infiniti jeep" was completely deflated. He also noticed that back left-hand side, the bumper was hanging off and the rim of the left rear tyre had a big crack inside. The driver of the jeep disembarked the vehicle and had the tyre changed at T's Tyres. While the workers at the tyre shop were

³ Witness Statement of Alissa Richards filed on 12th January 2018, paras. 3-4.

⁴ Registration number of the vehicle driven by the second defendant.

changing the tyre, Mr. Lynch noticed that Mr. Gore walked along the road to view the accident. When the tyre was repaired, Mr. Gore left the tyre shop and left the vicinity.

15. Mr. Lynch indicated that he was asked by the police to attend the police station and was able to identify the vehicle but noted that the vehicle was completely repaired. On cross-examination, Mr. Lynch admitted that he did not actually see Mr. Gore's vehicle hit Ms. Francis' vehicle.
16. This witness was confident that the damaged vehicle with the deflated tyre which entered the tyre shop was the vehicle of Mr. Gore and the same vehicle that was shown to him by the police officer.
17. The evidence of this witness was also compelling and there is no basis to impugn the credibility of this witness.

Kevin Simon

18. At the time of the accident, Mr. Simon was driving behind Ms. Francis. He was able to observe Ms. Francis exit Piggott's Main Road. Mr. Simon, himself, was also about to exit the Piggott's Main Road but intended to turn onto Sir Sydney Walling Highway when he observed travelling from West to East along Sir Sydney Walling Highway, a black vehicle which appeared to be travelling at a high speed. Mr. Simon observed Ms. Francis cross the Sir Sydney Walling Highway, and her vehicle was 90% off that Highway proceeding on the by-road when he saw a vehicle run off the Highway onto the dirt area, in front of Ms. Francis' vehicle. He also observed that as the vehicle passed, it pulled off the front bumper of Ms. Francis' vehicle. The black vehicle then went back onto the Highway⁵. On cross examination, Mr. Simon confirmed this to be an accurate account when he stated *"the black vehicle travelling from west to east swerved off on the road to the right onto the dirt road and hit Ms. Francis' car pushing it back into the road and pulling the front bumper off."*
19. Mr. Simon testified that he was on Piggott's Main road at the time, and therefore he *"would have been about 50ft away from her car, assuming the road was 50ft."* On cross examination, Mr. Simon confirmed his evidence in chief by stating that *"...the black car hit her car and put her back to the centre of the road. A yellow car then hit her car and push it on the stones. Her car was not in the road but was push back into the road by the impact of the first vehicle."* When asked whether the collision occurred when Ms. Francis was crossing the road, Mr. Simon replied, *"the black car hit the lady when she was over the road. It pushed her back into the road and that is when the other car hit her."*

Cornelius Samuel

20. *Cornelius Samuel*, an auto body workman gave evidence regarding the condition of the vehicle. This witness was not an expert witness in accordance with the provisions of CPR 32. There is no evidence before the court regarding the expertise of Cornelius Samuel, however, the court notes that during the testimony of this witness it was indicated that the prices of the replacement parts were provided based on information received from the motor vehicle dealer. Additionally, the pre-accident value of the vehicle was determined by reference to the purchase price of the vehicle at the time of purchase also received from the dealership and an accommodation of an 20% annual depreciation. The basis of the findings of this witness have not been seriously challenged by the defendant.

⁵ Witness Statement of Kevin Simon filed on 11th January 2018, paras. 2-5.

21. Regarding the vehicle, the evidence of Cornelius Samuel is that he inspected the vehicle in question and found that "the vehicle was badly damaged. The fender, the front door, the front glass, the rear door, the rear shock, the rear left headlamp, the rear right mirror, rear glass, piston rack, wheel disc, right headlamp, lamp side, front bumper, front grill, rear bumper, radiator, condenser and shroud fan all needed to be replaced." He also indicated that the vehicle needed to be repainted.
22. During cross-examination, the witness was asked to account for the absence of any visible damage to certain parts of the vehicle for which he indicated were required to be replaced. Mr. Samuel indicated that, although not visible the integrity of the parts in question were compromised and the parts needed to be replaced. While I, on a balance of probabilities, accept this explanation with reference to the rear lights which do not appear in the photographs to be damaged I do not accept this explanation with respect to the right front and back doors and the rear bumper.
23. In total, Cornelius Samuel, determined that the total costs for the work was estimated as being \$48,615.65 and the pre-accident value of the vehicle was determined to be \$25,000.00. Accordingly, this witness for the claimants determined that the vehicle should be 'written-off'. The value of the wreckage was estimated at \$4,500.00.

Mr. Ivor Gore

24. In paragraphs 3 to 6 of his Witness Statement, Mr. Gore stated as follows

3. *"As the bus turned, I could see the wheels of the corolla as it exited but I thought that it was making a left turn unto Sir Sydney Walling Highway. I did not realize that the driver intended to cross into the byroad on my right.*

4. *The bus had almost completed the turn. I was still on my side of the road at the time, when I observed that the silver corolla was actually coming out into my path. I swerved to my right in order to avoid it.*

5. *I believe that when the driver saw me, she mashed gas instead of brakes. There was a yellow Toyota run x travelling close behind of me. I knew that the driver of the silver corolla car would not have missed the run x because she barely avoided me.*

6. *I came to my stop on the left a little further on and was looking back through my right-side mirror. The two vehicles had already collided. When I was about to stand up, I felt a tug on the left side. I came to a stop and went to look at my vehicle. I realized that the left rear wheel was flat. I cannot be sure if the silver corolla collided with the left rear wheel of my jeep. (I was wearing spike lugs at the time.)"*

25. Although at paragraph 5 of his witness statement, Mr. Gore indicated that he *barely* avoided being in a collision with Ms. Francis' vehicle he later stated in his evidence that he was *not sure* whether the vehicle that he was driving collided with the vehicle driven by Ms. Francis.
26. Mr. Gore admitted that he drove away from the scene of the accident, returned on foot but again left the scene. He was not present at the scene when the police arrived. He admitted that he went to a tyre shop to have a flat tyre repaired. He admitted that when he returned to the scene of the accident, he did notice that Ms. Francis was trapped in the vehicle with her foot still on the throttle.

27. Mr. Gore did not make a report of the accident to the police. However, his evidence is that, on the afternoon of the accident, while he was at work, police officers when to his home and left a directive with an occupant that Mr. Gore was required to attend the headquarters as the police believed that he was involved in an accident. Mr. Gore's position was that he was not involved in an accident. A few days later Mr. Gore, after being so requested by the police, took his vehicle to the police station to be inspected by the investigating officer. Mr. Gore indicated on that day he was charged with reckless driving and failing to report an accident. Mr. Gore's evidence in chief is that he pleaded "not guilty" to both charges⁶ however in cross-examination he admitted that he subsequently pleaded guilty to the charges of dangerous driving.

28. I have not found Mr. Gore to be a credible witness for the reasons which will be outlined hereunder.

Law, Finding on the Evidence and Determination on Liability

29. In matters of negligence, the court addresses its mind to the duty owed, the breach of that duty and whether there are consequential damages arising as a result of foreseeable damages⁷. It is trite law that drivers owe a duty of care to all other road users⁸ and it is a question of fact whether a driver has observed the standard of care which is expected. The defendant has not raised as an issue to be determined whether the first claimant was in breach of any road safety codes or regulations. In any event my finding on the evidence before this court is that Ms. Francis did meet the required standard of care and that she gave way to approaching vehicles travelling along Sir Sydney Walling Highway. This finding is supported by the evidence generally and the specific evidence of Mr. Kevin Simon.

30. Mr. Simon was travelling immediately behind Ms. Francis on Piggott's Main Road. This witness observed that Ms. Francis crossed the Sir Sydney Walling Highway, and her vehicle was 90% off the highway and onto the unpaved by-road when the collision occurred. Mr. Simon then attempted to exit from Piggott's Main Road to turn east onto Sir Sidney Walling Highway when he noticed the Defendant's vehicle approaching at a very high speed. The evidence of this witness as well as the claimant is that the defendant was driving at an accelerated speed and he drove onto the unpaved road (the road that the claimant was entering) and drove back onto the Highway. I accept the evidence of these witnesses as an accurate account on how the accident occurred as their evidence is consistent with the photographic evidence tendered into court and is consistent with the findings of the police report.

31. I do not accept Mr. Gore's evidence that he was not aware that the vehicle that he was driving struck the vehicle driven by Ms. Francis. On this matter I have noted the evidence of the employee in the tyre shop where Mr. Gore went immediately after the accident to repair his tyre and his identification of the vehicle and his observation that in addition to there being a flat tyre there was damage to Mr. Gore's vehicle on the back left-hand side, the bumper and a big crack inside the rim of the left rear tyre. Given the damage to Mr. Gore's vehicle I find his contention that he was not aware of there being a collision to be unbelievable. I also accept the evidence of the said employee, Mr. Lynch, that the person in the black

⁶ Witness Statement of Ivor Gore filed on 12th December 2017, paras. 10-11.

⁷ Woods v Duncan [1946] AC 401.

⁸ Bourhill v Young [1943] AC 92.

vehicle who entered the tyre shop to have the tyre repaired immediately after he heard the collision was Mr. Gore.

32. Additionally, I have noted that the impact of the collision on the vehicle driven by Ms. Francis was such that her vehicle was pushed into the centre of the road. This suggests an impact of significant force and such force does not support Mr. Gore's version of events that he was unaware of the vehicles colliding.
33. Further, I have also not accepted the Mr. Gore's account of the accident for the following reasons:
 1. In his pleading, Mr. Gore denied colliding with Ms. Francis and indicated that he was not present at the time of the collision, however, at the hearing in the Magistrate's court he admitted that he pleaded guilty to dangerous driving in respect of the same accident.
 2. In his pleading, Mr. Ivor Gore averred that he was not aware of there being an accident between Ms. Francis and himself or Ms. Francis and the second named defendant. However, in his evidence he admits that he was present at the time of the accident and he saw Ms. Francis' vehicle collide with the second named defendant.
 3. In his pleadings, Mr. Gore averred that he had no knowledge of Mr. Francis being pinned in her vehicle as a result of the accident however in his evidence he noted that he returned on foot to the accident and noticed Ms. Francis in the vehicle.
 4. Through an admission Mr. Gore demonstrates that he was prepared to offer a deceptive version of the events on the day of the accident. At paragraph 8 of his witness statement Mr. Gore indicated that at the scene of the accident he spoke to the second named defendant who he indicated was a friend and in that conversation Mr. Gore said that the second named driver *"said that he was not sure that my vehicle collided with the silver car. He said to go because he would make his insurance deal with everything because it was, he and the other vehicle that really collided. He told me to go about my business because his story would be that I was not even there"*. This conversation has not been corroborated. In fact, the defence of the second named defendant is contrary to Mr. Gore's account of the conversation.
 5. Mr. Gore stated in evidence in chief that he pleaded not guilty to charges of reckless driving and the failing to report the accident, however, on cross-examination he admitted that he was arrested in relation to the collision on dangerous driving charges and later pleaded guilty to the charges.
34. In my view, Mr. Gore was in breach of his duty of care to other road users in that he so managed the vehicle he was driving that he collided with the vehicle driven by Lisa Francis as he attempted to pass to the front of Ms. Francis' vehicle while her vehicle was on the unpaved by-road. Although no pleaded I have also noted that any presumption of culpability premised upon the fact that the claimant crossed a major road has been rebutted by the evidence before the court.
35. On the matter of foreseeability, I have noted that motorists are expected to appreciate that, the negligent handling of their vehicle may initiate chain reactions which result in there being subsequent collisions beyond the first also giving rise to injury, damage and loss.

36. In the circumstances of this case, the collision of Mr. Gore's vehicle with the vehicle of Ms. Francis initiated a chain reaction which caused the vehicle of Ms. Francis to be pushed back into the Highway where it was hit by a second vehicle and then pushed onto rocks by the pond. Accordingly, the defendant is liable for the accident and consequential damages which flow as a result of the initial collision.
37. The matter of contributory negligence has not been pleaded, thus does not arise for this court's consideration.

Damages

Funds received by Ms. Francis from the Second Named Defendant.

38. The evidence of the claimant is that Ms. Francis has received the sum of EC\$67,000.00 from the second named defendant in respect of the accident. In the absence of specific evidence regarding the specific purpose for which the sum was paid, I have determined that the sum paid by the second defendant in his settlement of these proceeding are to be deducted from the award made in general damages.

Special Damages

39. It is trite law that special damages are required to be specifically pleaded and specially proven. Special damages mean *"the particular damage (beyond the general damage), which results from the particular circumstances of the case, and of the claimant's claim to be compensated, for which he ought to give warning in his pleadings in order that there may be no surprises at the trial"*⁹. Special damages may be pleaded where damages arise in a variety of circumstances, however, the matters relevant to this case are where *the precise amount of a particular item of damage has become clear before trial, either because it can be measured with complete accuracy, there are consequential losses that will be a matter of surprise to the defendant if not pleaded*¹⁰. The Claimant has pleaded that special damages be awarded.

40. In the case of **British Transport Commission v Gourley**¹¹ it is noted that:

"In an action for personal injuries the damages are always divided into two main parts. First, there is what is referred to as special damage, which has to be specially pleaded and proved. This consists of out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. Secondly, there is general damage which the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future."

41. The claimants in this case pleads a total of \$11,627.70 as special damages constituting:

- | | |
|---|--------------|
| 1. First Claimant's Loss of Income from
May 8, 2016 to August 26, 2016 | EC\$4,680.00 |
| 2. Cost of Police Report | EC\$ 50.00 |

⁹ See: Ratcliffe v Evans [1892] 2 Q.B. 524 at 528 dicta Bowen L.J.

¹⁰ See: McGregor on Damages 19th Ed. Paras 49-012 and 49-013.

¹¹ [1956] A.C. 185.

3. Cost of Estimate- Nickman Auto Body Work	EC\$ 400.00
4. Towing fees to Jim Daddy's Wrecker Service	EC\$ 180.00
5. Towing fees to Smith Wrecker and Moving Service	EC\$ 150.00
6. Medical Expenses to date	<u>EC\$ 6,167.70</u>
TOTAL	<u>EC\$11, 627.70</u>

42. Ms. Francis also claims loss of use of her vehicle and the replacement cost of her vehicle.

Loss of income for the period 8th May 2016 to 26th August 2016

43. Ms. Francis claims loss of income from a part-time job at Carlisle Bay Hotel. Her evidence is that she earned EC\$120 each day that she worked plus a meal allowance of EC\$30.00 and these wages were lost during the period of 8th May 2016 to the 26th August 2016 when she was immobilized as a result of her injuries. In support of the *viva voce* evidence of Ms. Francis, she produced a document purporting to represent salary paid to her by Carlisle Bay Resort. However, the document is headed "invoice" and it is dated the 16th September 2016, a date after the date of the accident. The document presented indicates a total of \$240, 2 days arranging maintenance storeroom \$120 x 2 = \$240. The document does not bear a stamp from Carlisle Bay Resort and there is nothing on the document which supports that Ms. Francis was, prior to the accident, employed on a part-time basis at the resort.
44. The claimant has also produced a copy of a cheque in her name issued by Carlisle Bay Resort in the sum of \$1200 dated the 1st September 2016. However, again there is no evidence which supports that the cheque was paid for work done by Ms. Francis nor is there evidence that there was a pre-existing employment arrangement.
45. As a consequent of the foregoing observation I find the claimant has failed to prove part-time engagement and therefore loss of income as a result of her inability to engage in part-time engagement. In finding that an award ought not to be made for loss of part-time wages, I have also considered that the sum claimed for lost wages is relatively significant and there has been no evidence that there is a difficulty to obtain and tender into evidence in support of pre-accident part-time engagement with Carlisle Bay Hotel.

Loss of Use

46. On the matter of loss of use, I helpfully refer to **Butterworths Personal Injury Litigation Service** where it is noted that:

If the claimant's motor vehicle has been damaged and rendered non-roadworthy in the accident a claim can be made for the period of time that the claimant is without the use of the vehicle. The value of the claim will be determined by a variety of factors including type of vehicle and its age, the impact of the loss upon the claimant's everyday life and the availability of alternative means of transport service. In the event that the claimant is provided with a hire vehicle, there will be no claim for loss of use and the claimant will be restricted to a claim for the cost of hire charges.¹²

47. Generally, when making an award for loss of use the court makes an award based on a daily rate.

¹² At paragraph 1279.

48. The evidence before the court is that when the vehicle was assessed it was determined that the vehicle was to be "written off". In the instant matter, Ms. Francis claims loss of use of her vehicle for the period of 130 days. Her evidence is that as a result of the accident, the claimant was inconvenienced by the loss of her vehicle. Ms. Francis indicated that she had to "*walk and get rides and take taxis to get to and from various destinations.*" Ms. Francis claims loss of use in the sum of EC\$150 per day.
49. In considering an award under this head I note that a *claimant must take all reasonable steps to mitigate the loss which he has sustained consequent upon the defendant's wrong, whether that wrong be a breach of contract or a tort. If he fails to do so, he is not in breach of duty as such, but he cannot claim damages for any such loss which he ought reasonably to have avoided, the reason being that such loss is regarded as flowing not from the defendant's wrong but from the claimant's unreasonable behaviour*¹³.
50. In the circumstances I have considered that the accident occurred on the 5th May 2016 and Ms. Francis would have received the assessment about the vehicle that it was to be written off sometime around the 31st May 2016. I have also noted that based on the medical evidence Ms. Francis was fully ambulant by the 6th July 2017. Accordingly, a reasonable period to be permitted the loss of use is for a period of three months after the accident by which time a claimant would have been expected to make arrangements for another vehicle.
51. Ms. Lisa Francis claims the sum of \$150 per day as being reasonable and in the absence of evidence by the defendant of a contrary sum I accept the sum of \$150 per day for a period of 90 days. Accordingly, I grant loss of use in the sum of \$13,500.00.
52. **Cost of Police Report, Cost of Estimate, Towing fees to Jimmy Daddy's Wrecker Service and Smith Wrecker and Moving Service.** The claimant claims a total sum of EC\$330 as wreckage fees and the cost of the police report in the sum of \$50.00. The receipt of the claim made is before the court and the total fee awarded on these items is EC\$380.00.
53. **The Claimant claims the replacement value of the Motor vehicle.** The courts award the replacement value or the pre-accident value of the vehicle less the value of the wreckage. Accordingly, the award is in the sum of EC\$20,500.00.
54. **Cost of Estimate- Nickman Auto Body Work.** The cost has been proven. Accordingly, the award is in the sum of EC\$ 400.00.
55. **The Repair to the Vehicle.** On the assessment of damages in tortious matters the court seeks to put the claimant, as far as money can so do, in the position that the claimant would have been in had the tort, in this case the accident, not occurred. The first name claimant in this case, makes a claim for the cost of repairs to the vehicle. The evidence of Cornelius Samuel is the pre-accident value of the vehicle was \$25,000.00 and the vehicle was written off as a result of the accident. Ms. Francis has been awarded the replacement value for the vehicle. There can be no further award for the cost of repair as this would place the claimant in a better position than she was in prior to the accident.

Medical Expenses.

¹³ Halsbury's Laws of England, Damages (Volume 29 (2019)- Paragraph 377-Claimant's duty to mitigate loss.

56. The authors of **Butterworths Road Traffic Service** at paragraph 302 noted that:

"The following types of losses/expenses are generally recognised as being recoverable as 'special damages' arising out of personal injury:

- Medical expenses relating to the injuries sustained, e.g. physiotherapy, pain medication, neck/ankle/wrist etc. supports, and so forth.*
- Care and assistance, whether provided by a professional or gratuitously by family/friends.*
- Loss of earnings/pension.*

All of these are subject to the claimant proving:

- The fact that these losses have been or will be incurred. This means, for example, producing receipts for specific items of expense; wage slips to prove loss of earnings; a medical report stating that physiotherapy/an operation will be necessary in the future; or witness statements from family members who provided care and assistance. (emphasis added)*
- A causal link between the alleged losses and the injuries sustained in the accident. This is simple factual causation; but for the injuries these losses would not have been incurred."*

57. Ms. Francis claims medical expenses in the sum of \$6,167.70. The evidence before the court as stated in paragraph 34 of the witness statement of Lisa Francis is that she "paid numerous fees for visits with the doctor and for prescriptions and physiotherapy and other medical expenses". The claimants' expenses were evidence in:

1. Receipt issued from Mount St. John's Medical Centre dated 8th July 2016 in the sum of \$100.00 received from Alissa Richards.
2. Bill issued by Mount St. John's Medical Centre for Alissa Richards dated 5/5/ 2016 in the sum of \$449.14.
3. Bill issued by Mount St. John's Medical Centre for David Richards dated 5/5/2016 in the sum of \$449.14.
4. Bill issued from Mount St. John's Medical Centre for Lisa Francis dated 5/6/2016 for the sum of \$3,989.64.
5. Receipt issued from Mount St. John's Medical Centre dated 5th November 2016 in the sum of \$20.00 received from Lisa Francis.
6. Receipt issued from Caribbean Orthopaedic Centre dated 18th May 2016 in the sum of \$200.00 received from Lisa Francis.
7. Receipt issued from Caribbean Orthopaedic Centre dated 30th May 2016 in the sum of \$280.00 received from Lisa Francis.
8. Receipt issued from Mount St. John's Medical Centre dated 17th June 2017 in the sum of \$150 received from Lisa Francis.
9. Receipt issued from Caribbean Orthopaedic Centre dated 1st July 2016 in the sum of \$280.00 received from Lisa Francis.
10. Receipt issued from Caribbean Orthopaedic Centre dated 22nd July 2016 in the sum of \$150.00 received from Lisa Francis.
11. Receipt issued from Caribbean Orthopaedic Centre dated 27th July 2016 in the sum of \$280.00 received from Lisa Francis.
12. Pharmacy receipt dated 31st May 2016 in the sum of \$4.20.
13. Pharmacy receipt dated 10th May 2016 in the sum of \$61.80

14. Pharmacy receipt dated 31st My 2016 in the sum of \$13.78

58. I find that there is causal link between the accident, the injuries sustained as a result of the accident and expenses incurred as a result of the injuries. Accordingly, the sum claimed in medical expenses is allowed.

General Damages

59. The principles which guide the court in assessing general damages are set out in the landmark case of **Cornelliac v St. Louis**, [1965] 7 WIR 491. The court is required to consider the following:

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

60. The court is required to arrive at a fair compensation which reflects the loss and injury caused to the claimant by the actions of the defendant. The sum is not calculable by any fixed formula but is intended to put the injured party in the position they would have been had they not sustained the injury.

61. In **Wells v Wells**, Lord Hope of Craighead stated that:

"...The amount of the award to be made for pain, suffering and the loss of amenity cannot be precisely calculated. All that can be done is to award such sum within the broad criterion of what is reasonable and in line with similar awards in comparable cases as represents the court's best estimate of the plaintiff's general damages...."

62. The criteria that a judge should apply in the exercise of his or her discretion in relation to general damages for personal injuries are well set out in the Civil Appeal case of **CCCA Limited v Julius Jeffrey** and reads as follows:

"...it is, in my view, a function of the law, as far as possible, to be predictable, given the infinite variety of the affairs of human kind. In the context of damages for personal injuries, there are certain principles which apply and there is a discretion which needs to be exercised. In the case of pain, suffering and loss of amenity, that discretion could be wholly subjective and hence unpredictable, or it could be precedent based; that is to say, the trial judge, having considered all of the evidence led before him, would take into account other awards within the jurisdiction and further afield. Awards of similar injuries would be clearly very helpful in relating the claimant's injuries on a comparative scale. This is not a precise science, leaving much room for the trial judge's discretion".

63. In an assessment of damages, the practice is to grant a global sum taking into consideration the principles espoused by Wooding CJ in the seminal case of **Cornelliac v St. Louis**. In **Kathleen McNally v Eric Lotte and CITCO (BVI) Ltd**, Rawlins J. stated:

"The practice is to grant a global sum for general damages for pain and suffering and loss of amenities, considering these against the background of the nature and extent of the injuries sustained and the nature and gravity of the resulting impairment and physical disability."

The nature and extent of injuries sustained.

64. The medical report of Dr. Deepraj C. Gaekward, a Consultant Orthopaedic Surgeon at the Bones and Joints Orthopaedic Centre is instructive in this case. The claimants were primarily treated at the Mount St John's Medical Centre. The first claimant was treated for:

1. Blunt chest Trauma,
2. Trauma of the right knee,
3. Right pulmonary contusion and right thigh proximal muscle contusion,
4. Mild tenderness in the vicinity of the 4th costal cartilage

A radiologist report of the CT scan dated 5th May 2016 confirmed that Ms. Francis sustained:

5. A fracture of the fourth right rib on the plain radiograph study of the chest and
6. Patchy opacities of the lungs.

A subsequent radiologist's report of the CT Scan of the chest dated the 9th May 2016 reported:

7. A non-displaced comminuted fracture of the superior ramus on the right side at its junction with the acetabulum.
8. A small non-displaced fracture of the inferior ramus on the right side involving the margin of acetabulum.

The nature and gravity of the resulting physical disability

65. The medical report of Dr. Deepraj C. Gaekward indicated that as a result of the accident, Ms. Francis ambulated with a limp (antalgic gait) with restriction of active motion of the right hip in terminal ranges and full active range of motion of the ipsilateral right knee and ankle. By the time of the follow-up visit, on the 30th May 2016 the right hip range of motion was clinically improved and she was advised gradual range of motion exercises of the right hip while remaining non-weight bearing on the right lower limb to allow for the consolidation of the fractures.

66. There were complaints of right groin pain precipitated by prolonged standing. There was also improved range of motion of the right hip flexion with terminal restriction. By the 6th July 2017, Ms. Francis was independently ambulant, full weight bearing on both lower limbs and full active range of motion of the hips and no limb length discrepancy.

67. It was determined by Dr. Deepraj C. Gaekward that according to the Guides of the Evaluation of Physical Impairment- Sixth Edition of the American Medical Association, reference Table 16-4 Class 1 with Grade Modifier 1, that Ms. Francis suffered from a physical impairment was calculated as five percent of the right lower extremity and two percent (WPI) Whole Person Impairment.

68. It was determined that the long-term degenerative changes affecting the right hip of Ms. Lisa Francis will require right hip replacement arthroplasty.

Pain and Suffering and Loss of Amenities.

69. The claimant describes that when the accident occurred, her legs were trapped under the steering wheel of the vehicle in a flexed position for 45 minutes. She was assisted out of the vehicle with the 'jaws of life'. Ms. Francis explained that after the second collision, she felt that she was going to die. She was further distressed when she heard her children screaming in the vehicle.

70. Ms. Lisa Francis indicated that she felt extreme pain all over her body, and during the time when she was trapped in the vehicle, she was having difficulty breathing. Immediately after the accident, Ms. Lisa Francis was taken to the hospital where she was admitted for a period of four days. During the period of hospitalization, Ms. Francis was bedridden and could not attend to her bodily functions without assistance.
71. After Ms. Lisa Francis was discharged from the hospital, she was placed on three months sick leave and was on strict bed rest. She was required to wear a neck brace for four days. While on sick leave, Ms. Francis was not mobile and had to use a swivel chair to get around the house since she was unable to obtain a wheelchair. Ms. Francis evidence is that she experienced difficulties with ambulation as she was unable to stand for long periods and required to use crutches for a period of about two months. Ms. Francis encountered pain when she moved and engaged in everyday activities. When she visited the doctor on 22nd July 2016 she was complained of symptoms of right groin pain precipitated by prolonged standing more than ten minutes.
72. As part of a recuperation regime Ms. Francis was required to undergo physiotherapy. She complained that the physiotherapy sessions were painful.

Comparable cases Considered

73. In arriving at an appropriate award, I have given consideration to comparable awards given by other courts.
74. The claimant in **Errol Edwards v Gabriel George¹⁴**, was awarded a sum of \$50,000 for pain and suffering and loss of amenities in 2013 for numerous injuries including (a) fractured hip, (b) puncture wound to the right leg (c) soreness to the right knee and (d) abrasion to the left knee, forehead and right side of the face. The claimant in that case stated that he was unable to continue his hobby of gardening.
75. In the case of **Mercedes Delplesche v Samuel Emmanuel De Roche¹⁵** where the claimant, 54 years, suffered trauma to the head and left knee, abrasion to face, laceration to forehead and nose, bleeding to nostrils with scars to forehead and nose. She was admitted to hospital for four (4) days and upon discharge attended an outpatient clinic for physiotherapy sessions. In 2013 the court awarded the sum of \$65,000.00 for pain and suffering and loss of amenities.
76. In the case of **Myrtle Cynthia Nicholas v Delbert Charlemagne¹⁶**, the claimant sustained a 40% wedge compression fracture of L4 and developed osteoarthritis of the left hip. She complained of continuous pain in her left hip and back, tilting of the back, walked with a limp and was unable to perform basic functions on her own for the first 6 months of her injuries. Upon further review, the claimant was diagnosed with post traumatic healed wedge compression fracture of L3 and L4; osteoarthritis of the left hip; osteoarthritis of the left sacroiliac joint. The claimant, two years post-accident, was able to

¹⁴ GDAHCV2011/0424.

¹⁵ Cited in **Geraldine Welsh v Joel Budd**, GDHACV2017/0235.

¹⁶ SLUHCV2016/ 0628.

perform basic activities but with difficulty as she suffered persistent back and hip pains whenever she stood for long periods or lifted heavy objects. The court awarded a total of EC\$151,211.36 for general damages comprising of (i). Future Medical Care -\$91, 211.36 and (ii). Pain and suffering and loss of amenities -\$60,000.00 in June 2017.

77. In the case of **Geraldine Welsh v Joel Budd**¹⁷, the claimant, 52 years at the time of the accident, suffered an injury to her right wrist and right side of her hip. She was referred to the hospital where analgesics were prescribed with extended sick leave. The claimant sustained direct trauma, resulting in contusion of the right hip. The pain in her right wrist had subsided but she complained of pain in the right hip especially when getting up from a sitting position with a shocking sensation in the right buttock. The claimant was assessed with having bilateral mild osteoarthritis with small osteophytes posterior acetabular joint space narrowing worse on the right with degenerative changes to the hip. The claimant ambulated with an abnormal gait with tenderness on palpitation on the posterior over the gluteal region. There was no indication for surgery for the contusion of the claimant's right hip, but she needed analgesics, especially after repetitive or vigorous physical activities. However, the pre-existing degenerative joint disease of both hips may require future surgical intervention. The court awarded General damages for pain and suffering and loss of amenities in the sum of \$50,000.00 (\$30,000.00 for pain and suffering and \$10,000.00 for loss of amenities) and \$10,000.00 for future medical care. (July 2018)
78. In **O'Garro v Ross**¹⁸, the claimant was a 30-year-old woman who sustained a fractured acetabulum and dislocated her right hip. She was hospitalized for one month. She walked with a cane and a knee brace to keep her knee in place. It was diagnosed that there would likely be complications of post traumatic arthritis of the hip in the future. In 2012, the court awarded general damages in the sum of \$100,000.00 for pain and suffering and \$40,000.00 for loss of amenities.
79. In **Anita Tobitt v Grand Royal Antiguan Beach Resort Limited and Stanford Frederick**¹⁹, the Claimant was 35 years old at the time of the accident suffered back injuries in a vehicular accident while she was a passenger. She was diagnosed with prolapse of lumbar inter-vertebral disc/lumbo-sacral disc with diminished sensation in the dermatome distribution of L5-S1. She was found to be 8% permanently disabled, and she had continuing pain, discomfort and the injuries negatively impacted her lifestyle. In 2010, she was awarded EC\$50,000.00 for pain and suffering inclusive of \$20,000 for loss of amenities and \$30,000.00 for pain and suffering.
80. Taking into account all the relevant circumstances and noting the nature of injuries suffered and the pain experienced by the claimant as a result of the collision, the court awards the amount of \$85,000.00 for pain and suffering and loss of amenities.

Future Medical Care

¹⁷ GDHACV2017/0235.

¹⁸ SVGHCV2004/0329.

¹⁹ ANUHCV2006/0026.

81. Dr. Gaekward indicates that as a result of the injuries sustained in the accident the first named claimant is likely to require hip replacement surgery sometime in the future. He estimates that the cost of the surgery to be \$45,000.00. Dr. Gaekward has also recommended regular follow up appointments at quarterly intervals per year for orthopaedic evaluations along with chest physiotherapy. The orthopaedic evaluation was estimated at XCD\$300.00 per consultation and supervised physiotherapy at XCD\$100 per session. Ms. Francis has claimed these future costs.
82. I accept the evidence of Dr. Gaekward that Ms. Francis, as a result of the injuries sustained in the accident, would require hip replacement surgery and would have to incur this as a future medical expense. Accordingly, the sum of EC\$45,000.00 is awarded for future surgical expense.

Future Physiotherapy and Consultation for the First Claimant.

83. The Privy Council in **Seepersad v Persad & Anor (Trinidad and Tobago) [2004] UKPC 19** in relation to the costs of future medical treatment and medication states:

"It is not possible to form an accurate and verifiable estimate of the future cost of medical treatment and medication, because so much depends on how the appellant progresses in the future. It was not challenged that he had incurred such expense in the past, as is shown by the inclusion in the agreed special damage of a significant sum for medical treatment and medication. It does appear that there is likely to be some continuing expense, even if he improves significantly as time goes on. In their Lordships' opinion the most appropriate way to deal with this item is to allow a figure which will reflect the possibility of his incurring future expense of this type, on similar lines to the well-established approach to valuing loss of employment capacity: of such cases as Smith v Manchester Corporation (1974) 17 KIR 1 and Moeliker v Reyrolle & Co Ltd [1976] ICR 253."

84. Dr. Deepraj Gaekward makes a recommendation for orthopaedic evaluations along with chest physiotherapy however, there is no evidence that would assist the court in determining when the claimant is likely to require the hip replacement surgery nor is there evidence regarding the frequency of orthopaedic evaluations after the replacement surgery. There is also no information regarding the reason for the long-term chest physiotherapy treatment. In my view, there is insufficient information to credit Ms. Francis with a multiplier of 12 as suggested by Counsel for the claimant. In the circumstances, I am of the view that the use of a multiplier of 5 with respect to the chest physiotherapy and a multiplier of 8 with respect to the quarterly orthopaedic evaluations is sufficient. The estimated cost of the orthopaedic evaluation is \$300.00 per consultation and the supervised therapy \$100.00. Accordingly, the court awards the sum of \$ 9,600.00 for future orthopaedic evaluations and \$2,000.00 for chest physiotherapy.
85. **General Damages for Alissa Richards and David Richards.** Ms. Francis' minor children, Alissa Richards and David Richards suffered minor injuries.
86. **Alissa Richards.** The evidence from Alissa Richards is that she received a starch on her leg which she contends was very painful. She was taken to the hospital, but she was not required to be admitted. There is no medical evidence in support of any other injury and there is no evidence that she was prescribed pain killers to treat with the pain from the starch on her leg.

87. **David Richards.** The evidence of Ms. Lisa Francis is that as a result of the accident her son, David Richard, was adversely affected in his academics as his grades have deteriorated since the accident and he complains of headaches.
88. Reference is against made to comparable cases to assist in arriving at an appropriate award. In the case of **Harvey Taliam and other v Kurt Duncan and another**²⁰ the court awarded one of the claimants, Neo Taliam, who was three years old at the time of the accident, a nominal award of \$500.00 for general damages. As a result of his parents having been in the hospital for two months, this claimant suffered shock, fear and anxiety during and after the accident. Although the minor did not suffer physical injury, there was evidence that his personality changed after the minor and his parents were in the motor vehicle accident.
89. In **Peter Cherry and other v Trevor Trim and another**²¹, the court awarded \$2,000.00 in general damages to one of the claimants who suffered point tenderness to lumber spine and left lower abdominal tenderness. X-Ray and urinalysis were normal/negative. The court also awarded another claimant in this case, who was three years old at the time of the accident, the sum of \$2,500.00 in general damages. This claimant had a laceration to the right side of the head and some swelling to the right leg. There was an episode of vomiting and X-ray showed no fractures, but he was admitted to the hospital for 3 days for observation.
90. In the circumstance of this case where Alissa Richards complains of having sustained a painful scratch on her leg. I also recognize that being in an accident of such a nature would be a very traumatic experience for a minor and ought to be included in the consideration of pain and suffering. Thus, I award general damages in the sum of \$1000.00 in general damages.
91. As it relates to David Richard, I have noted that there is no evidence of physical injury arising as a result of the accident. There is no evidence which supports that adverse grades arose as a result of the accident. There is no evidence that the continued headaches complained of arose as a result of the accident. However, as with Alissa Richards, I do recognize that being in an accident of such a nature would be very traumatic for a minor and I award the sum of \$800.00.
92. The following awards are made:
1. First claimant, Lisa Francis:
 1. General damages in the sum of \$18,000 (\$85,000 less the sum of \$67,000 received from the second defendant) interest at a rate of 5% from the date of service of claim.
 2. Future Surgery \$45,000.00
 3. Future Physiotherapy and orthopaedic evaluation consultations \$ 11,600.00.
 2. Second claimant, Alissa Richards.
 1. General damages in the sum of \$1000.00 interest at a rate of 5% from the date of service of claim
 3. Third Claimant, David Richards:

²⁰ SLUHCV2018/0418.

²¹ SLUHCV2011/0073.

4. General damages in the sum of \$ 800.00 interest at a rate of 5% from the date of service of the claim. Interest on special damages at the rate of 3% from the date of the accident until judgment.
5. Special damages for first, second and third claimants:
 1. Medical expenses for the first, second and third claimant \$6,167.70.
6. Special damages for the first named claimant:
 1. Replacement value of Vehicle \$20,500.00
 2. Police report and wreckage fees \$ 380.00.
 3. Loss of use \$13,500.00
 4. Valuation report \$ 400.00Interest on special damages at the rate of 3% from the date of the accident until judgment.
7. Prescribed costs in accordance with CPR 65.5.

Marissa Robertson
Judge

By the Court

Registrar

