

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
(Nevis Circuit)**

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

Claim Number: **NEVHCV2017/0062**

Between

Melissa Allen

Claimant

and

Marvin Ross

Defendant

BEFORE: The Honourable Justice Ermin Moise (Ag.)

APPEARANCES:

Mrs. Sherry-Ann Liburd-Charles of counsel for the claimant
Mr. Gyan Robinson with Mr. Adrian Daniel of counsel for the defendant

2019: January, 21st
March, 5th

Judgment

[1] **Moise, J (A.g.):** This is an assessment of damages arising out of a motor vehicular accident which occurred on 26th April, 2015. The defendant accepted liability and the matter is before the court solely on the issue of quantum of damages. The parties have duly filed witness statements and legal submissions. The claimant's claim for damages now rests on two separate headings. These are special damages which include compensation for the value of the motor vehicle and damages for loss of use.

Special Damages

[2] The claimant presents receipts to show that a total cost of \$200.00 was incurred in obtaining a road traffic accident report and an estimate of the repairs of the motor vehicle. This is not in dispute and the claimant is therefore entitled to the sum of \$200.00.

- [3] In addition to these expenses, the claimant also claims the sum of \$29,000.00 as compensation for the pre-accident value of the motor vehicle. She presents an estimate of repairs from Mr. Stanley Grant who is described as holding a certificate in auto body repairs. He goes on to state, in a witness statement filed on his behalf on 1st May, 2018, that he has done a number of local courses over the years and is trained to carry out assessments of motor vehicles. He states in his evidence that he had knowledge of the claimant's motor vehicle as he was responsible for servicing and maintenance of the said motor vehicle from the time of its purchase in October, 2014. The motor vehicle, according to him, was in a good condition immediately prior to the accident. He states that upon examination after the accident he did not recommend that it be repaired due to the extent of the damage. It is not disputed that the motor vehicle is properly deemed to be written off. As it relates to the pre-accident value of the motor vehicle, Mr. Grant certifies that this amounts to \$35,000.00 with a salvage value of \$1,000.00. Upon that basis the claimant claims \$29,000.00 in damages for the value of the motor vehicle.
- [4] The defendant, on the other hand, argues that the damages under this head ought to be significantly lower. He states that in doing his own research he was able to locate a similar make and model of the motor vehicle over the internet at a cost of \$2,693.00US. This amounts to approximately \$7,271.10EC. This he states is inclusive of shipping. He states further that he made enquiries with the customs and excise department and was provided with a letter which states that the total cost of charges, duties and taxes on the importation of such a vehicle amounts to \$11,424.67. The defendant's argument is that the total cost of replacing the claimant's vehicle is \$18,695.77.
- [5] Needless to say, the claimant rejects this assertion and states that the cost of purchase of a used vehicle of that nature would depend on a number of factors including the mileage and general state of the motor vehicle. Given that this motor vehicle was purchased less than six months prior to the date of the accident, it would have been of great assistance if the claimant had simply exhibited documentation to show what was the actual cost of purchase and importation of the vehicle. Dispute denying the defendant's assertion, she made no attempt to do so herself. During cross examination of Mr. Grant, who provided the valuation on which the claimant relies, conceded that a motor vehicle of that nature may be imported for approximately \$18,000.00EC. When pressed on the methods used to determine the value of the claimant's motor vehicle, he too indicated that he searched over the internet for an indication of a comparable cost. He provided very little information of his findings other than that the motor vehicle is to be valued at \$30,000.00 based on its condition.

[6] The claimant, in her written submissions relies on the best evidence rule in support of her claim for the sum of \$29,000.00 in damages for the value of the motor vehicle. I have my doubts however, as to whether the best evidence has been provided. I note that in the case of ***Vincent Jones v. Kevin Gervais***¹ the court expressed the view, that where the cost of repairing the motor vehicle is substantial, the claimant should consider whether “***it would be more economical to purchase a similar vehicle on the open market***”. No doubt an actual value of the motor vehicle may assist in determining what a reasonable amount award for damages ought to be. However, given that this motor vehicle was purchased less than six months prior to the date of the accident, the actual cost of purchase would have assisted the court greatly in determining a fair amount to be paid as it would give some indication of the open market value of the vehicle.

[7] Given those findings above, I agree with the defendant that the evidence provided by the claimant does not satisfy the burden which she is required to prove. However, he concedes in his written submissions that the court can award what appears to be reasonable in nominal damages where an actual amount is not proven. I accept this concession as it is clear that the claimant has indeed suffered the loss of the value of her vehicle. It is however her duty to prove that loss and there is some deficiency in the evidence she has provided. As I indicated earlier, Mr. Grant accepted that an approximate sum of \$18,000.00 is reasonable for the purchase of a motor vehicle of that make and model. Taking into account the other issues raised in his evidence and that of the claimant I would award the sum of \$22,000.00 in damages for the value of the claimant’s motor vehicle.

Loss of Use

[8] The claimant also claims damages for loss of use of her motor vehicle. The parties have no dispute that the vehicle was used as a rental at a daily rate of \$120.00. Despite this, the claimant claims a daily loss of use of \$125.00. The second issue of contention is the period claimed for loss of use. The claimant states that the motor vehicle has never been replaced and suggests that she is entitled to loss of use for a period of 3 years. She makes concession for the number of days within that period which can be claimed and submits that damages for loss of use should be awarded for a total of 648 days. By

¹ CV2012-025333(Trinidad and Tobago)

my calculation this amounts to a total of \$81,000.00 and not \$78,500.00 as alluded to in paragraph 23 of her written submissions.

[9] The claimant relies on a number of authorities which establish what a reasonable daily rate ought to be for the loss of use of a chattel used for hire. However, in my view, most of these cases sought to establish a reasonable sum where little to no evidence of the actual loss has been provided. In the present case the evidence establishes that the daily rate for the rental of the claimant's motor vehicle was \$120.00 and this is the amount which the court will consider. As it relates to the total period, I note that the claimant states in her evidence that she is no longer engaged in the business of car rentals. She however gives no precise date as to when she brought her enterprise to an end. In all the circumstances of the case and taking into account the claimant's duty to mitigate her losses I believe that a period of 1 year is reasonable for compensation for loss of use. At a rate of \$120.00 per day I would award the sum of \$43,800.00 in damages for loss of use.

[10] In the circumstances I make the following orders:

- (a) The defendant will pay the claimant the sum of \$22,200.00EC in special damages;
- (b) The defendant will pay the sum of \$43,800.00 to the claimant for the loss of use of the motor vehicle;
- (c) The defendant will pay interest at the statutory rate from the date of judgment until the judgment debt is paid in full;
- (d) The defendant will pay to the claimant prescribed costs in the sum of \$5,445.00 taking into account the reduction due to the stage at which the proceedings have come to an end.

**Ermin Moise
High Court Judge**

By the Court

Registrar