

**EASTERN CARIBBEAN SUPREME COURT
GRENADA**

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

Claim Number: **GDAHCV2016/0155**

Between

Kevin Rodney Charles

Claimant

and

Devon Pierre

Defendant

Before: MASTER Ermin Moise

Appearances:

Ms. Hazel Hopkins of counsel for the Claimant
Defendant in Person

2018: October, 10th
2019: January, 8th

JUDGMENT

[1] **MOISE, M.:** This is an application for an assessment of damages. On 17th May, 2017 the parties filed a consent order in which the defendant accepted liability with damages to be assessed. The parties have filed witness statements and legal submissions in support of and in opposition to the assessment. On 10th October, 2018 counsel on record for the defendant was granted leave to withdraw from the record. The Defendant agreed however, that the assessment of damages should proceed on the written submissions already filed by counsel prior to the order for withdrawal.

[2] The facts of the case are generally not in dispute. The claimant states that on 31st January, 2015 he was driving his pickup truck along the Westerhall main road. He asserts that the defendant so negligently drove his omnibus so as to cause physical damage to his truck. He now claims compensation under two separate heads of damages. Firstly, he claims special damages for the total cost of repairs to his truck. Secondly, he claims loss of use and asserts that he was unable to operate the truck for an extensive period of time due to the damage done as a result of the accident. I will examine each of these in turn.

Special Damages for repairs to the claimant's truck

- [3] At paragraph 19 of his witness statement, the claimant states that he expended "several sums in repairs (inclusive of repair parts and labour)". He itemized and exhibited receipts and invoices in order to substantiate his claim. The invoices, presented in the witness statement total \$44,429.09. However, in the legal submissions filed in support of the assessment, counsel for the claimant indicates that the amount claimed should be reduced by \$11,200.00 due to duplication in some of the invoices presented. It is therefore submitted that the special damages, after considering the remaining invoices should amount to \$33,229.09.
- [4] In opposition to this submission, the defendant argues that the court is not in a position to ascertain the type and extent of the damages claimed by the claimant. He asserts that no professional survey or mechanic's report was exhibited to clearly identify the damage as well as a proper cost for the repairs. The defendant also argues that in the absence of a professional report, the court is unable to determine whether or not it was economical for the claimant to undertake the repairs. Given the claimant's duty to mitigate his losses, he ought to have satisfied the court that it was best to incur such costs in repairs rather than purchase a similar motor vehicle on the open market. In support of this argument the defendant refers to the case of ***Vincent Jones v. Kevin Gervais***¹ where the master stated the following:

"The learning is clear that a claimant cannot insist on repairs at the defendant's expense if it would be more economical to purchase a similar vehicle on the open market. It is only where no substitute is available or no other reasonable alternative that a claimant would be entitled to have his vehicle repaired."

- [5] The claimant asserts in his witness statement that there was no agent for the make and type of this truck in Grenada. As such, he had some difficulty in sourcing the parts in order to undertake the repairs. He argues that the traffic accident report contains a list of the damages which the vehicle sustained and relies on that in lieu of a professional examination report. However, I agree with the submissions of the defendant. The traffic accident report is not an expert's report on the actual damage caused to the claimant's truck. It merely outlines the observations made by the police

¹ CV2012-025333(Trinidad and Tobago)

officers who attended to the accident on the scene. Given the substantial amount of money he claims to have spent in repairs, it would have been proper for the claimant to have presented an expert's report outlining the damage to the motor vehicle and the expected cost of repair. Further, such a report ought also to have contained the pre-accident value of the pickup truck in order to ascertain whether it would have been prudent to declare this motor vehicle a write off and then proceed to award the damages based on the value of the vehicle at the time. Failure to supply the court with this information means that the claimant has not satisfied the requirement to show that he has done all in his power to mitigate his losses.

[6] In ***Emrol Phillip et al v. Paul Greenidge et al***², Master Wallace made the following observations at paragraph 14 of his judgment on assessment:

“I am satisfied that the claimant has suffered some loss but the repair costs are of a fairly high value, their evidence is somewhat lacking and they have not fully substantiated the amount sought. There is no evidence of pre-accident value, post-accident value, whether the vehicle was damaged beyond repair or any replacement value before the court.”

[7] After making these observations the master was minded to reduce the damages claimed in some of the invoices by as much as 50%. I agree that a similar approach is to be adopted in this case. \$33,229.09, is a substantial amount to claim in repairs without a more comprehensive report outlining why it was necessary and what was the pre and post-accident value of the motor vehicle. I would not reduce the damages to 50% as it is clear that the claimant suffered some significant loss. I would therefore award the sum of \$25,000.00 reduced from the amount conceded by counsel in the claimant's written submissions.

Loss of Use

[8] In his witness statement, the claimant asserts that he earned in excess of \$1000 per day in the use of his truck. He presented some documentation to substantiate this claim. One such document is a letter dated 10th May, 2016 from the operations manager of Lorrain's Equipment Services Co. Ltd.

² GDAHCV2015/0461

This letter indicates that between 25th January, 2015 and 25th February, 2015, the claimant was contracted to provide trucking services at a rate of \$1,000.00 per day. He also presents invoices for what can be described as intermittent trucking services provided to Gravel Concrete & Emulsion Production Corporation. These do not established a fixed daily rate. However, they do prove that the claimant earned a living from the operation of his pick-up truck. Despite these documents, the claimant conceded that the nature of his business is not such that invoices are readily issued. In such a circumstance the court, though accepting that there was a loss, is not in a position to calculate this loss with any precision. Therefore, a nominal award is to be granted.

[9] In his witness statement, the claimant states that he was unable to repair his truck for a period of one year. He provides three reasons for this assertion. Firstly, he states that he was instructed by the police to desist from performing any work on the truck until they had completed some testing. This he states was the cause of at least a one month delay. Secondly, he asserts that there is no agency for this type of truck in Grenada and that it took some time to source the parts in order to effect repairs to the truck. Lastly, he also asserts that he was unable to complete the repairs due to the fact that he did not have the resources to do so at an earlier date.

[10] Counsel for the claimant refers the court to the case of ***Clippens v. Edinburg and District Water Trustees***³ in support of the assertion that delays in carrying out repairs to the truck because of impecuniosity should not prejudice the claimant's claim. In that case Lord Collins stated that ***"the wrongdoer must take his victim talem qualem, and if the position of the latter is aggravated because he is without means of mitigating it, so much the worse from the wrongdoer, who has got to be answerable for the consequences flowing from his tortious act."*** I agree with that sentiment and find that the claimant's impecuniosity ought not to work against him in the pursuit of a just award in compensation for the defendant's tortious actions.

[11] Despite the 12 months period claimed in his witness statement, the claimant's statement of claim seeks compensation for a period of 36 days at a rate of \$600.00 per day. Counsel for the claimant seeks to reconcile this difference in written submissions. However, it would seem clear to me that the claimant is requesting more in damages for loss of use in his witness statement than that which was claimed in the statement of claim. In any event, the court's award of damages for loss of use in

³ [1907] A.C. 291

the present case is one which cannot be calculated with any precision. It is a nominal award and ought to be reasonable in all the circumstances. I refer to the case of ***Hamilton Edward v. The Attorney General***⁴ in which the sum of \$100 per day was awarded to a taxi driver as a reasonable award for loss of use. In my view, the sum of \$600.00 claimed by the claimant in this case is too high. Whilst the claimant was able to present invoices to show that at times he would earn \$1000 per day, this does not establish that he would earn fees for trucking services on every day. They also do not adequately address the expenses incurred in performing these services. In the circumstances I would award damages for loss of use at a rate of \$200.00 per day for the 36 day period claimed in the statement of claim. I would therefore award damages in the sum of \$7,200.00 under this head of damages.

[12] It is hereby ordered and directed as follows:

- (a) The defendant is to pay the sum of \$25,000.00 in damages for the cost of repair of the claimant's motor vehicle;
- (b) The defendant is to pay the sum of \$7,200.00 for the loss of use of the claimant's vehicle;
- (c) The defendant is to pay interest at a rate of 3% from the date of filing to the date of judgment and 6% from the date of judgment until the debt is paid in full;
- (d) Prescribed costs in the sum of \$3,381.70

**Ermin Moise
Master**

By the Court

Registrar

⁴ SLUHCV2015/0669

