

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCv 2010/0587

BETWEEN:

KATE MORRIS

Claimant

and

ALPHAЕUS ANTHONY

First Defendant

LOCAL OILS LIMITED

Second Defendant

Appearances:

Ms. Kathleen Bennett for the Claimant

Ms. Stacy Richards-Anjo for the Defendants

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2011: October 3
December 20
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JUDGMENT

- [1] **MICHEL, J.:** This case concerns a motor vehicle collision which occurred on 9th July 2009 on Old Parham Road, near its intersection with Hawkins Drive, involving motor car registration number A32704 owned and driven by Kate Morris (the Claimant) and motor truck registration number C9451 owned by Local Oils Limited (the Second Defendant) and being driven at the time by Alphaeus Anthony (the First Defendant).

[2] The Claimant's case is that on the day in question she was driving her motor car in a northerly direction along Hawkins Drive towards Old Parham Road and, upon reaching the intersection, she stopped and indicated her intention to turn left onto Old Parham Road; a motor bus travelling from west to east along Old Parham Road stopped in order to facilitate her exiting Hawkins Drive and turning onto Old Parham Road; two other motor vehicles stopped behind the motor bus; she then turned left onto Old Parham Road; when she was about to complete the turn, the motor truck being driven by the First Defendant overtook the three stationary vehicles on her right side of Old Parham Road and collided with the right front side of her vehicle and, in the process, pushed her vehicle back towards Hawkins Drive. She claimed that the motor truck was being driven with speed at the time; that the First Defendant overtook the stationary vehicles when it was not safe to do so; and that the collision was caused by his negligence. She claimed that her vehicle was damaged in the collision and that she suffered loss and damage as a result. She claimed that, at the time of the collision, there were three other persons in her car, her aunt (Zelma Benjamin) who was the front seat passenger, her mother (Glendina Benjamin) who was the back seat passenger and her (the Claimant's) four-month old baby who was in the back seat with Glendina Benjamin.

[3] A witness statement dated 10th June 2011 was filed on behalf of the Claimant, which the Claimant acknowledged in her testimony at the trial to be hers and to be true and correct. Her evidence was supported and corroborated by the evidence of her three witnesses, Glendina Benjamin, Zelma Benjamin and Eustace Daniel – who was the driver of the motor bus which stopped on Old Parham Road to facilitate her turning onto Old Parham Road. All three supporting witnesses gave witness statements and were cross examined at the trial.

- [4] There were only minor discrepancies in the evidence of the Claimant and her witnesses, none material to the issue of liability for the collision.
- [5] The Defendants' case is that the First Defendant was driving the motor truck along Old Parham Road from west to east at about 20 miles per hour when, on seeing three vehicles stopped in front of him, he moved to the right and overtook them; as he passed the intersection with Hawkins Drive, the Claimant drove out of Hawkins Drive without stopping at the intersection and her motor car slammed into the right side and right rear wheels of the motor truck. He claimed that the collision was caused by the negligence of the Claimant.
- [6] A witness statement dated 8th June 2011 was filed on behalf of the First Defendant, which the First Defendant acknowledged in his testimony at the trial to be his and to be true and correct. No other witnesses were called by the defence, so there was no evidence in support of the evidence of the First Defendant.
- [7] No counterclaim was filed by the Defendants, nor was contributory negligence pleaded by them.
- [8] There were some discrepancies in the evidence of the First Defendant, such as the issue of whether he had overtaken three vehicles before the collision; sometimes he claimed that he did not overtake any vehicles, but merely passed a stationary or parked vehicle or vehicles, but at other times that he did overtake; sometimes he said it was a single vehicle that he passed or overtook and sometimes it was two or three. In her written closing submissions on behalf of the Defendants, Counsel for the Defendants in fact accepted that the First Defendant had overtaken three vehicles on Old Parham Road which had stopped to allow the Claimant to make the left turn unto Old

Parham Road from Hawkins Drive and the Court accepts this as a correct representation of what happened.

[9] The major difficulty with the evidence of the First Defendant is the fact that, based on his evidence that the Claimant failed to stop at the intersection between Old Parham Road and Hawkins Drive and slammed into the side of the motor truck being driven by him, the damage to the Claimant's motor car should have been to the front of the car and should also have been far more extensive than it was. The fact that the Claimant's motor car was damaged in the manner and in the place as shown in the photographs disclosed by both the Claimant and the Defendants is consistent with the evidence of the Claimant and her witnesses to the effect that the First Defendant drove a motor truck filled with oil too fast on a busy highway and overtook three vehicles on the highway as he approached its intersection with a minor road and failed in the process to heed the presence of the Claimant's motor car which was at the time turning onto Old Parham Road from Hawkins Drive.

[10] Having seen and heard all five witnesses who gave evidence in Court, and having perused the statements of case and the several documents forming part of the evidence in this case, this Court is satisfied on a balance of probabilities that on 9th July 2009 the First Defendant drove motor truck registration number C9451 along Old Parham Road without due care and attention and caused the collision which occurred between the motor truck and the Claimant's motor car, resulting in damage to the Claimant's motor car. The Court is also satisfied, on the admission of the Defendants, that the First Defendant was the employee of the Second Defendant and was, at the time of the collision, driving his employer's vehicle in the course of his employment, so that the Second Defendant is vicariously liable for the negligence of the First Defendant. It remains

therefore for the Court to determine the damages payable to the Claimant by the Defendants for the loss and damage occasioned to her as result of the collision.

[11] In her statement of claim, the Claimant claimed damages, interest, court fees, costs and further or other relief as the Court deems fit. Although the Claimant has not specifically pleaded special damages, she particularized her loss and damage as being \$13,791.00 for the cost of repair of her motor car and loss of use of the car for 113 days at a total cost of \$18,551.30. The Claimant based her claim for \$13,791.00 on an estimate of repairs from Charlie's Autobody Specialists (Exhibit KM1) and her claim for \$18,551.30 on car rental receipts from Gavin's Car Rental (Exhibit KM2).

[12] Noting that the Claimant's vehicle was either 8 years old or 10 years old at the time of the collision, if the Claimant was compensated based on the cost of new parts for an 8 or 10 year old vehicle she would be over compensated for her loss. The Court will therefore deduct one third of the cost of the parts from the amount to be awarded to the Claimant in damages for the repair of her motor car, because she would otherwise be compensated for the replacement cost of old parts based on the cost of new parts. No deduction will be made, however, from the costs of the labour and materials for the repair of the car.

[13] In terms of the claim for loss of use, every claimant is required to mitigate his or her loss flowing from a breach of contract or breach of duty of care by another, and the Claimant in this case could not keep her damaged vehicle with a total repair cost of \$13,791.00 unrepaired for 113 days and then turn around and claim loss of use of \$18,551.30 arising from it not being repaired. The Claimant is entitled to general damages for inconvenience due to the loss of use of her motor car only for the time it would reasonably have taken her to get her vehicle repaired and, since no

estimate was provided by the Claimant or by Charlie's Autobody Specialists as to the time it would reasonably have taken, the Court will allow for one month's loss of use in the award of general damages to the Claimant on the basis that this ought to be sufficient time for the Claimant to have gotten her vehicle repaired. Since no indication was given to the Court as to the reason for the difference in the daily cost for the car or cars or the type of car or cars rented by the Claimant during the 113 days, and since the Claimant's motor car was an 8 or 10 year old Toyota Corolla, which is a pretty common and inexpensive motor car in Antigua and Barbuda, the Court will use the lower rental cost of \$153.90 per day and include in the calculation of the award of general damages to the Claimant loss of use for 30 days at a daily cost of \$153.90.

- [14] The award of general damages to the Claimant will total \$16,077.66, which the Court arrived at by calculating the repair cost of the motor car as follows – two thirds of the total cost of the parts for the car (\$4,660.66), the full cost for labour for the repair of the car (\$6,000.00), the full cost of materials for the repair of the car (\$800.00) and loss of use for 30 days at \$153.90 per day (\$4,617.00). Pursuant to section 27 of **the Eastern Caribbean Supreme Court Act**, Cap. 143 of the Laws of Antigua and Barbuda Revised Edition 1992, the Claimant will also be awarded interest on the sum of \$16,077.66 at the rate of 5% per annum from 9th August 2009 (that is one month from the date of the collision, by which date the Claimant's motor car ought to have been repaired) to 20th December 2011 (the date of this judgment); the interest award will be \$1,909.22. Prescribed costs of \$2,698.00 on the full amount of the judgment (\$16,077.66 + \$1,909.22) will also be awarded to the Claimant. Of course, the Claimant is entitled to interest of 5% of the total award of \$20,684.88 from the date of this judgment to the date of payment, pursuant to section 7 of **the Judgments Act**, Cap. 227 of the Laws of Antigua and Barbuda Revised Edition 1992.

[15] The Court accordingly orders that the Defendants shall jointly and/or severally pay to the Claimant the following:

1. General damages of \$16,077.66.
2. Interest of \$1,909.22.
3. Prescribed costs of \$2,698.00.
4. Interest on the total amount of the award from today's date to the date of payment.



Mario Michel
High Court Judge