

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SAINT LUCIA

CLAIM NO. SLUHCV2002/0965

BETWEEN:

DEXTER JAMES

Claimant

And

- 1. M & A SOUFRIERE SIGHTSEEING -
TOURS LIMITED**
- 2. JOACHIM DUPLESIS**

Defendants

Appearances:

Dexter Theodore for Claimant
Effrem Edgar for Defendants

2008: November 24;
2009: January 28.

JUDGMENT

- [1] **GEORGES, J.:** This claim arose as a result of a collision which occurred along the Castries/Gros Islet Highway about mid-morning on Wednesday 13th October 1999 between the claimant's Mitsubishi motor omnibus registration number HB 3502 and a pick-up registration number FAR 873 owned by the first defendant and driven by the second defendant as its servant or agent. The main cause of the collision as alleged by the claimant in the particulars of negligence of his statement of claim filed 11th October 2002 is that the second defendant negligently drove from a minor

road on to a major road when it was unsafe to do so without regard for traffic on the major road.

[2] No acknowledgment of service having been filed by the defendants who were duly served on the 17th and 24th October 2002 respectively judgment in default of service was entered against both of them on 31st March 2008 for an amount to be decided by the Court.

[3] In support of his claim the claimant who stated that he was employed as a driver swore and filed an affidavit on 20th June 2008 claiming special damages of \$28,190.00 as well as general damages interest at the rate of 6% per annum from 13th October 1999 until the date of payment and costs. The second defendant filed a reply challenging certain of the heads of damage. On 24th November 2008 Counsel for the parties invited the Court to make a determination of the terms of the judgment on the papers and I now do so as the file could not be found thereafter until the 15th January 2009. The accident as I said at paragraph 1 had occurred since the 13th October 1999.

[4] At paragraph 4 of his affidavit the claimant after declaring that his vehicle (minibus HB 3502) was as a result of the accident written off as a total loss claims as special damage:

Pre-accident value of motor-omnibus HB3502	\$28,000.00
Less: Sale of wreck	\$5,000.00
Value of motor-omnibus HB3502	\$23,000.00
Wrecker Service	\$250.00
Police Report	\$200.00
Excess on policy	\$2,500.00
Motor Surveyor's Report	\$140.00
Loss of use while the said vehicle	

was undergoing repairs – 7 days at \$300.00 per day \$2,100.00

My total claim for special damages is \$28,190.00

No fewer than 10 documents were exhibited in support thereof.

- [5] After deducting the salvage value of the wreck (\$5000.00) from the pre-accident value of the omnibus (\$28,000.00) the claimant claims \$23,000.00 being his net resultant loss in respect of his vehicle. His insurer paid him \$20,500.00 after deducting an excess of \$2,500.00. By virtue of the doctrine of subrogation that amount would be recoverable by him from the defendants on behalf of his insurer.
- [6] I take no issue with and would accordingly allow the other heads of special damage claimed which are properly substantiated save and except the claim for loss of use while the vehicle was undergoing repairs – 7 days at \$300.00 per day. The inspector who surveyed the damaged vehicle stated in his report dated 16th November 1999 that repairs were not recommended and the wreck was in fact sold as salvage for \$5,000.00. In light of these circumstances the claim for loss of use whilst the vehicle was undergoing repairs cannot possibly stand and is disallowed. It is a cardinal rule that special damage must be strictly proved and that head of damage has not been substantiated in any way.
- [7] In the result the total award in respect of special damage is \$24,240.00.
- [8] I now turn to the claim for general damages. Under that head the claimant states at paragraph 12 of his affidavit that he was unable to work for 3 months as a result of his injuries and claims loss of wages of \$5,000.00 per month for 3 months. That head of damage strictly speaking should properly fall under special damage.
- [9] At paragraphs 6 and 7 of his affidavit in reply the second defendant noted:

6. That I have also observed that the Claimant deposes at paragraph 7 of his Affidavit that he lost consciousness as a result of the accident, and at paragraph 12 of the same that he was unable to work for three (3) months as a result of his injuries. That a perusal of the Medical Report as exhibited in the Claimant's Affidavit as "D.J. 5" deposed to in paragraph 5 of the same, reveals at lines 4 and 5 of the said report that there was no history of loss of consciousness.

7. That I also note from the penultimate paragraph of the Medical Report that the Claimant was reviewed by the Orthopaedic doctor on call, and all the investigations undertaken on the Claimant were normal. That the said Report also reveals in the last paragraph that the Claimant was discharged the same day and was given sick leave with a view to full recovery in one to two weeks.

[10] In light of the foregoing the claim for loss of wages for 3 months which is unsubstantiated and appears to be inflated is reduced to two weeks (the period of sick leave) in the total sum of \$2,500.00.

[11] With regard to damages for pain and suffering perusal of Dr. Marlene Frederick's medical report the Senior House Officer in the Accident and Emergency Department at Victoria Hospital states as her significant findings:

1. Tenderness in right hip on examination: there was no swelling, bruise or deformity.
2. A 2 cm superficial laceration to his right heel – right ankle movements were normal.
3. 1 cm superficial laceration to the forehead.

He had no chest neck or abdominal pain the doctor further declared.

[12] In *Cornilliac v St. Louis* (1964) 7 W.I.R 491 Wooding C.J. stated four considerations which a judge should bear in mind in making an assessment of non-pecuniary damages, namely:

- (a) the nature and extent of the injuries sustained;
- (b) the nature and gravity of the resulting physical disability;
- (c) the pain and suffering which had to be endured; and
- (d) the loss of amenities suffered.

[13] With those guidelines in mind and having regard to the trend of recent awards in comparable cases in the region I am satisfied that general damages of \$7,500.00 to the claimant in this case would be meet and I so order.

[14] Judgment is accordingly entered for the claimant against the defendants jointly and severally as follows:

(i)	Special damages	\$ 24,240.00
(ii)	Two weeks loss of wages at \$1250.00 per week	\$ 2,500.00
(iii)	General damages for pain and suffering etc	\$ 7,500.00
TOTAL		\$34,240.00

With interest at the rate of 6% per annum from the date of filing the claim i.e. 11th October 2002 to date of payment.

Costs to the claimant in the sum of \$6,000.00.

EPHRAIM GEORGES
HIGH COURT JUDGE (AG.)