

IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES

2004 NO: 63

BETWEEN:

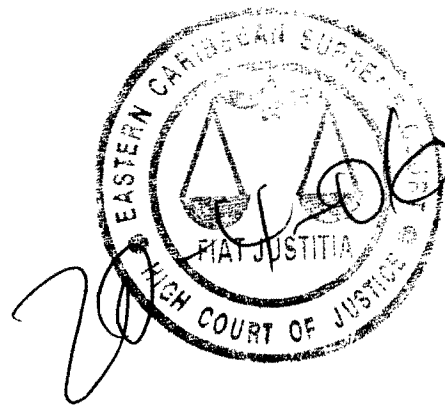
O'NEIL GEORGE

CLAIMANT

V

GERMAINE BAYNES

DEFENDANT



Appearances:

Mr. A. F. Williams for Claimant

Mr. J. A. Delves for Defendant

DECISION

April 20, 2006

- [1] The claimant and the defendant are drivers of motor vehicles which were involved in a collision. As often happens, each parties considered that the other was at fault. At the trial Bruce-Lyle J. found that the claimant was at fault. He dismissed the claim and found for the defendant on the counterclaim. He simply thought that the evidence of the defendant was more credible. Judgment was therefore entered for the defendant for damages to be assessed and costs.
- [2] The accident occurred on 7th October, 2002. The defendant's vehicle was not repaired until some 10 months later.
- [3] It was accepted by Mr. A. F. Williams for the claimant that the cost of repair of the defendant's vehicle was \$8,132.00. I award this sum. Mr. Williams also accepted that the defendant paid her insurer the excess sum of \$1,500.00. For his own reasons he agreed that this sum is also recoverable by the defendant. On the basis of this concession I award the defendant this sum as well.

- [4] The only item the parties wished me to consider was the issue of loss of use. It took some 10 months for the defendant's vehicle to be fully repaired.
- [5] The claimant says that this is an inordinately long time. The defendant had a duty to mitigate. She could have paid to her insurers the excess sum of \$1,500.00 upon which they would have repaired her vehicle. The defendant explains the delay this way.
- [6] Firstly she says, she was impecunious she could not afford the \$1,500.00 needed as the excess payment. However, from the evidence, it appears that the defendant did not even get an estimate for the repairs before December 2002. The defendant when cross examined, said that she first waited on the claimant. He had said to her that he was wrong and would pay monthly towards the cost of repairing the defendant's vehicle. When the claimant later reneged on that promise to pay the defendant awaited word from the Counsel who represented his insurers.
- [7] Counsel for the insurers of the claimant appeared at the assessment as a witness and denied suggesting to the defendant that she should wait to hear from the insurers before repairing her vehicle. It was put to the defendant that the repair of the vehicle would take 15 days. I accept from the evidence that the required parts were not available in St. Vincent and that it would take some time to obtain these. I find two weeks would be sufficient for this purpose.
- [8] Had the claimant promptly awaited herself of recourse to her insurers the repairs to her vehicle would have been effected in about one month. I find that she was reasonable in waiting to have the claimant compensate her as he had promised. But this period would only have been for a few days at most to permit him to claim on his insurers.
- [9] It is instructive to see how the repairs were eventually done. The defendant claimed on her insurers. They paid her the cost of repairs less \$1,500 – the excess sum. This amount she paid to the repairers over a period of time. I recount this as while I agree with Mr. Delves that a tortfeasor must take his victim in the financial condition that he meets

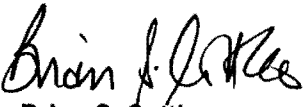
him, this defendant could have had the vehicle repaired without immediate expenditure. In fact she did so in the end.

[10] In the circumstances I award the claimant loss of use for one month. The defendant says the daily rate is \$150.00. The claimant says the daily rate is between \$125.00 - \$150.00.

[11] I accept the claimant's figure. The award under this head is $\$150 \times 30 = \$4,500.00$.

[12] In sum I award the defendant $\$4,500.00 + \$1,500.00 + \$8,132.00 = \$14,132.00$.

[13] I award prescribed costs in the amount of \$4,240.00.


Brian S. Cottle
MASTER