

ST. CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE

ST. CHRISTOPHER CIRCUIT

CIVIL SUIT NO. 41 OF 2001

BETWEEN:

DAVID SAUNDERS **1st Claimant**

STEVE SAUNDERS **2nd Claimant**

NESTA SEATON **3rd Claimant**

and

GRACE RHYMER **Defendant**

Damien Kelsick for the claimants.

Hesketh Benjamin for the defendant.

2004: October 7
November 26

JUDGMENT

[1] **BAPTISTE J:-** On 20 June 1998 a car driven by Nesta Seaton and owned by David and Steve Saunders was involved in a vehicular accident which resulted in injuries to Ms Seaton and damage to the car. Judgment having been entered in favour of the claimants, the court now assesses damages.

[2] Ms Seaton claims general and special damages. With respect to a claim for general damages the court has to consider the following: the nature and extent of the injuries sustained; the nature and gravity of the resulting physical disability; the pain and suffering which had to be endured; loss of amenities; and the extent to which the claimant's pecuniary prospects have been affected. (See **Cornilliac v St. Louis** [1965] 7 WIR 491).

- [3] Ms Seaton's evidence is that as a result of the collision her head struck the inside of the vehicle resulting in a terrible headache and pain in her neck and upper back region. This necessitated the wearing of a cervical collar for two weeks. The neck pain was severe and constant for the first three weeks following the accident. She had trouble sleeping as movement exacerbated the pain. The pain lessened over the next three months. At present the pain has substantially subsided. If pressure is applied to the right rear of the neck she feels pain and tenderness. If she sits for extended periods of time she feels an uncomfortable stiffness and pressure in her neck. This is experienced almost daily and sometimes several times a day.
- [4] On 21 December 1998, Dr. Laughton Richardson examined Ms Seaton and diagnosed residual whiplash injury of the back of the neck. In October 2002, a neurosurgeon, Dr. Bedaysie, examined Ms Seaton. His findings were consistent with cervical muscle strain. An MRI was done in Trinidad in October 2003. It revealed mild spasms with cracking in the neck, range of movement full, sensation and reflexes normal, and diminished sensation in the right med nerve. His findings were consistent with neck strain and right carpal tunnel syndrome.
- [5] Ms Seaton seeks \$25,000.00 in damages for pain, suffering and loss of amenities. I have indicated the pain and suffering experienced by Ms Seaton. Counsel for Ms Seaton provided the court with two local authorities in which the court awarded damages of \$9,000.00 for pain and suffering, consequent upon whiplash injuries. In the instant case taking all the circumstances into account an amount of \$14,000.00 would be reasonable for pain and suffering.
- [6] An amount of \$2649.54 is claimed as special damages. This comprises the cost of an airline ticket to Trinidad and Tobago and the cost of an MRI and medical examination in Trinidad and Tobago. I am satisfied that Ms Seaton has proven and is entitled to that sum as special damages.

[7] I now consider the claim by David Saunders and Steve Saunders for special damages arising from the damage to their motor vehicle. The vehicle was examined by two mechanics, including one David Huggins, an auto mechanic of over 30 years experience. The average estimated cost of repairs was \$12,897.54. Both mechanics gave evidence that it was not economic to repair the vehicle. The average loss based on the respective pre and post accident values of the vehicle was \$13,750.00. David and Steve Saunders claim that sum as special damages. They have pleaded and proved the loss and are entitled to the sum of \$13,750.00. They have also proven their entitlement to the sum of \$100.00 for cost of towing, \$200.00 cost of estimates and \$2,135.27 for loss of the no claim bonus.

[8] In resisting the claim of \$13,750.00 Mr Benjamin raised the issue of subrogation and pointed out that the insurance company was not a party to the claim. In Halsbury's Laws of England 3rd Edition, Volume 22, para 309, it is stated:

"The principle of subrogation may be illustrated as follows: - if two ships A and B come into collision and the collision is due to the negligence of those in charge of B, the owner of A who has insured her, can recover the amount of his loss from the owner of B, and the latter cannot resist the claim on the ground that the owner of A was entitled to recover or even had already recovered from his underwriters. If he has recovered his loss from the owner of B, he will be compelled to account to the underwriters for the money he has so received and his claim against them will be pro tanto reduced or, if he has recovered a complete indemnity, extinguished. The owner of A may, however, in the first instance recover his loss from the underwriters, and in such case they will be subrogated to his right to recover the loss from the owner of B."

In my judgment, the principle of subrogation does not avail the defendant.

[9] Judgment is entered for the claimants in the amount of \$32,834.81. This comprises special damages of \$16,185.27 to David Saunders and Steve Saunders and general damages of \$14,000.00 and special damages of \$2649.54 to Nesta Seaton.

- [10] Interest is awarded on the special damages at the rate of 2½ per cent per annum from the date of the accident to the date of trial. Interest is awarded at 5 per cent per annum on damages for pain and suffering, from the date of service of the writ to the date of trial.
- [11] The claimants are awarded costs of \$9,708.70.

Davidson Kelvin Baptiste
High Court Judge