

**IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES**

1997 NO: 375

BETWEEN:

KEN DA BREO

PLAINTIFF

AND

**WILLIAM CUFFY
AND
WENDELL CUFFY**

DEFENDANTS

Appearances :

Mr. R. Birch-Smith for the Claimant.

Mr. S.E. Commissiong for Defendant

RULING

February 24, 2003

- [1] On 21st November, 2000 Mitchell J. in Open Court gave judgment for the claimant for damages to be assessed and costs to be taxed.
- [2] The Claimant applied to have the damages assessed and costs taxed. He supported his application with two affidavits.
- [3] Caleb Jacobs, a Claims Adjuster at the Beacon Insurance Co. Ltd. swore that on 29th May 1997, along the Byera Main Road, there occurred a collision between the claimant's motor vehicle, H5004, and the defendant's vehicle T9971. As a result of that accident the claimant's vehicle was a complete loss. One Mr. Dennis Gunsam examined the vehicle and provided a report. The Insurance Company thereupon paid out the value of the vehicle, which they accepted as approximately \$15,000 on the basis of Mr. Gunsam's report, less the excess deductible of \$3,000 which the claimant was obliged to meet according to his insurance contract.

- [4] The second affidavit on which the claimant relied at the assessment of damages was that of Mr. Dennis Gunsam. Mr. Gunsam deposed that he had some 18 years of experience in auto body repair shop on his return to St. Vincent in 1984 following a two-year APEX-certified training programme in Puerto-Rico. He further adds that as the operator of a tow service called D & C Wreck and Tow Truck Service he encounters many vehicles in St. Vincent and the Grenadines, which have suffered serious damage in motor vehicle accidents. Mr. Gunsam examined the vehicle H5004 and swore that he considered himself competent to provide an accurate and reliable estimate of the value of the vehicle H5004 prior to the accident. It is to be noted that the Beacon Insurance Co. Ltd. accepted Mr. Gunsam's valuation without question.
- [5] Mr. Gunsam explains that he based his estimate of the value on his familiarity with the nature of the local market for similar vehicles at the time, the age of the van, the purpose for which it had been used and the type of maintenance it appeared to have enjoyed over its lifetime. He put the value of the vehicle H5004 at approximately \$15,000 before the accident.
- [6] The Defendant did not provide any evidence as to the value of the vehicle H5004 prior to the accident. Mr. Commissiong on behalf of the Defendant demanded to cross-examine the deponent Mr. Gunsam as to his affidavit. The assessment of damages was adjourned for that purpose. A witness summons was issued to secure the attendance of Mr. Gunsam for cross examination on his affidavit. At the same time, Counsel for the defendant was ordered to file and serve written submissions of the legal propositions on which he would rely at the assessment of damages together with the authorities in support thereof.
- [7] When the matter came back up for hearing on the adjourned date, Mr. Gunsam appeared in response to the witness summons. Counsel for the defendant was not able to produce any evidence that he had filed the written submissions as required. No written submissions could be found on the case file. Despite this the Court accepted an unstamped copy of the defendant's submissions for consideration.

- [8] Having insisted on Mr. Gunsam's appearance to be cross examined, Counsel for the defendant declined any cross-examination and chose to rely on his written submissions.
- [9] The result of this was that the Court had no evidence to contradict the sworn affidavit of Mr. Gunsam. His evidence was not tested by cross-examination. Mr. Commissiong elected instead to argue that Mr. Gunsam's expertise is not deposed to in his affidavit in detail. He complains that Mr. Gunsam arrived at his value by leaps in logic. He says the court should be suspicious of Mr. Gunsam's experience as a Motor Mechanic and the soundness of his skills as a valuer.
- [10] It was unfortunate that, after he had insisted that Mr. Gunsam attend, Counsel for the defendant elected not to challenge his evidence at all by way of cross examination.
- [11] The Court was presented with the uncontroverted evidence of value from Mr. Gunsam. I therefore base the assessment of damages on this value. I assess the value of H5004 before the accident at \$15,000.00. The claimant derived \$5,000 from the sale of the wreck.
- [12] At the hearing the claimant abandoned his claim for \$3,000 being the excess paid pursuant to this insurance contract.
- [13] I award to the claimant the sum of \$10,000 being the difference between the value of H5004 and the amount derived from sale of the wreck.
- [14] I also award costs of \$3,000 to the claimant to be paid by the defendant.

Brian S. Cottle
MASTER