

**SAINT LUCIA:
IN THE HIGH COURT OF JUSTICE
(Civil)**

No: 72 of 1994

Between:

1. DANA MC INTOSH
2. MONA MC INTOSH

- Plaintiffs

VS

1. HUBERT PAUL
2. ALOYSIA THEOPHILUS

- Defendants

Appearances:

Mr. A McNamara for the Plaintiffs
Defendants absent. Unrepresented

1999: May 10th & 17th

JUDGMENT

d'Auvergne J.



HISTORY:

A letter on file dated 11th March, 1999 clearly shows that despite the Defendants lack of interest in the present Suit they were informed of the state of the matter before the Court and were advised to seek other arrangements for representation. This being so after the parties names were called three times and did not appear, the trial began and the second named Plaintiff gave evidence on behalf of the Plaintiffs.

FACTS:

The Plaintiff told the Court that on Saturday the 23rd day of January, 1993 at about 12:00 noon, she was then driving motorcar registration number 6021 of which the first Plaintiff is the registered owner, from a side road, from the Rodney Bay Marina into the Main Castries/Gros-Islet Highway and then into another side road into the Bella Rosa Hill. She said that as she got to the junction of the Rodney Bay Marina side road and the said highway she looked both left and right and observed that her left side was clear but there was a "transport very very far away" on her right, that she indicated that she was turning left and acted accordingly then right into the Bella Rosa Hill. Once more she looked right and left, saw the "transport still a long way away, that she was almost into the entrance of that second side road when once more she looked into the rearview mirror on the door and to her surprise saw a white car which was overtaking the said "transport" on the right hand side facing north, was almost on her.

She said that by that time she had three quarters of her car into the Bella Rosa road, when the car registration number 926 driven by the second named Defendant collided with the back of her car, causing it to "spin right around and caused it to be a right off." She said that it appeared that she "went out for a few minutes" and that when she regained consciousness she recognised a neighbour who assisted her son and herself out of their car, registration number 6021, and drove them to the hospital.

She tendered four exhibits to verify her particulars of special damages viz:

1. Wrecker Service \$350.00
2. Cost of Mechanical Report \$120.00
3. Cost of motor car rental from January 25th, 1993 to March 1st, 1993
\$3,500.00
4. Medical Expenses \$365.00.
5. She also claimed pre-accident value of Motorcar Registration
Number 6021 less salvage value at \$10,000.00

ARGUMENT:

Learned Counsel for the Plaintiffs addressed the Court by stating that the Police Report confirmed the Plaintiff's case that the second named Defendant was driving with excessive speed and acted negligently by overtaking in an area with two minor roads.

He also contended that the Plaintiffs should be awarded general damages for personal injuries sustained by the second named Plaintiff and for the negligence of the second named Defendant.

He concluded by submitting that the Defendants' Counterclaim should be dismissed with costs.

CONCLUSION:

I have only the Plaintiffs' evidence upon which to arrive at a conclusion and as Learned Counsel for the Plaintiffs said, the Police Report confirms the

second named Plaintiff's evidence. It reads: "Second named Defendant improperly overtook a car travelling ahead and collided with the back of car number 6021 which was making a right turn into Bella Rosa Road."

SPECIAL DAMAGES:

The exhibits confirm all the particulars of special damages as pleaded in the Statement of Claim.

I therefore should award the Plaintiff's the \$14,335.00 claimed as special damages and interest at the rate of 4% from date of Judgment to date of payment.

GENERAL DAMAGES:

The second named Plaintiff told the Court that she sustained injuries to her left hand and the documentary evidence of Dr. St. Rose confirms that there would be "over 50% disability of the use of her left hand for 10 weeks." The latest cases of Martin Alphonso vs Deodat Ramnath (Civil Appeal 1 of 1996)(British Virgin Islands) and Fenton Auguste vs Francis Neptune (Civil Appeal No. 6 of 1996)(St. Lucia) considered.

I should award the second named Plaintiff \$10,000.00 for pain and suffering and \$5,000.00 for the negligence of the second named Defendants.

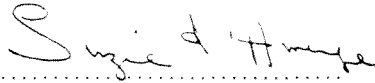
I award interest on the general damages at the rate of 5% per annum from the date of service of the writ to the date of trial.

The Counterclaim is dismissed for want of prosecution (no costs awarded).

ORDER

I therefore give Judgment for the Plaintiffs against the Defendants in the sum of \$29,335.00 (\$14,335.00) as special damages and \$15,000.00 as general damages with interest as stipulated above.

Costs to the Plaintiffs to be agreed or otherwise taxed.

A handwritten signature in cursive script, reading "Suzie d'Auvergne", written over a horizontal dotted line.

SUZIE d'AUVERGNE
High Court Judge