

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

GRENADA

GDAHCVAP2022/0028

BETWEEN:

CELESTINE MORAIN

Appellant

and

**[1] ST. GEORGE'S UNIVERSITY LTD.
[2] WESLEY LUCAS**

Respondents

Before:

The Hon Mde. Vicki Ann Ellis

Justice of Appeal

The Hon. Mr. Reginald T.A. Armour

Justice of Appeal [Ag.]

The Hon. Mde. V. Georgis Taylor- Alexander

Justice of Appeal [Ag.]

Appearances:

Ms. Hazel Hopkin- La Touche for the Appellant

Ms. Britney Scott and Mr. Deloni Edwards for the Respondents

2025: July 10;
September 16.

Civil appeal – Negligence – Assessment of damages – Apportionment of liability – Whether the finding of 50:50 liability ought to be set aside – Special damages – Replacement value of vehicle – Whether the learned judge erred in failing to award the full sum of \$60,000.00 for the replacement of vehicle – Disclosure – Part 28 Civil Procedure Rules 2000 - Whether the learned judge erred in failing to consider the valuation report when assessing the appellant's claim for special damages

On 1st October 2014, Celestine Morain ("the appellant") and Wesley Lucas ("the second named respondent") were involved in a motor vehicle collision along the Maurice Bishop Highway in Point Salines, St. George's Grenada. The accident occurred at approximately 7:00 a.m. near the entrance of the former Rex Grenadian Hotel (now Royalton Grenada).

In the lower court, the appellant claimed special damages totalling \$107,561.00, comprising medical expenses of \$1,847.50, loss of income of \$8,400.00, and various

losses relating to his vehicle HAE19, including its replacement value of \$60,000.00, loss of use for specified periods amounting to \$14,800.00 and \$15,925.00 respectively, and loan expenses with Republic Bank (Grenada) Ltd. of \$15,000.00 together with associated bank fees of \$400.00 and stamp duty of \$706.00. He further claimed a towing fee of \$172.50, an accident report fee of \$260.00, a police report fee of \$10.00, and the cost of a letter before action in the sum of \$287.50.

Each party alleged that the collision was caused by the other's negligence and claimed loss and damage. The appellant's evidence was that, while driving towards the Maurice Bishop International Airport, he observed a coaster bus ahead veering toward the extreme left side of the road. Believing it was safe to overtake, he signalled, sounded his horn, and began to manoeuvre when the second named respondent suddenly swerved right without warning, causing collision. The second named respondent however, asserted that he had signalled a right turn and was turning into the entrance of the Rex Grenadian Hotel when the appellant attempted to overtake. At trial, the second named respondent modified his account, stating he was actually attempting a U-turn rather than turning into the hotel.

Although the trial judge acknowledged inconsistencies in the second named respondent's version of events; particularly regarding whether he was turning into the hotel driveway or executing a U-turn, he found that the key undisputed fact was the second named respondent's movement into the right lane at the time of the collision. The judge ultimately accepted that the accident occurred while the second named respondent was performing a U-turn and the appellant was overtaking in the same lane. Therefore, the judge concluded that both parties were negligent. He found that the second named respondent had already begun turning and was near the middle of the road when the appellant attempted to overtake at speed and in close proximity. In light of these findings, the court determined that both drivers had engaged in dangerous manoeuvres, and each bore equal responsibility for the resulting collision.

The court awarded the appellant a total of \$45,903.73, inclusive of pre-judgment interest, comprising medical expenses of \$923.75, loss of income of \$2,941.96, the replacement value of his vehicle in the sum of \$15,000.00, loan expenses of \$8,053.00, loss of use assessed at \$10,000.00, and \$365.00 for towing and related fees, together with interest on special damages at 3% per annum from 1st October 2014 to the date of trial in the sum of \$8,620.02, and further interest on all damages at 6% per annum from the date of judgment until payment. No award for general damages was made to the appellant, the learned judge having found that such damages had not been pleaded. On the counterclaim, the court awarded the first named respondent (SGU) \$24,860.00 for damage to its vehicle and the second named respondent \$1,616.92 in medical expenses and \$20,000.00 in general damages for pain and suffering, the latter sum reflecting a 50% reduction from an assessed \$40,000.00. Interest was awarded on the combined special damages at 3% per annum from 1st October 2014 to the date of trial in the sum of \$6,112.89, and on the general damages from the date of service of the claim to the date of trial in the sum of \$3,685.08, resulting in a total award of \$56,274.89 inclusive of

pre-judgment interest, with further interest on the global sums at 6% per annum from the date of judgment until payment. Each party was ordered to bear its own costs.

Being dissatisfied with the judgment of the learned trial judge, the appellant filed a Notice of Appeal on 23rd November 2022 challenging the liability apportionment, the duty of care findings and the trial judge's failure to award full special damages for the vehicle replacement. The grounds of appeal are summarized into the following issues:

1. Whether the learned judge erred in apportioning liability equally between the appellant and the second named respondent, and whether such apportionment ought to be set aside and substituted with a finding that the second named respondent is solely (100%) liable for the collision.
2. Whether the learned judge erred in failing to award the full sum of \$60,000.00 claimed by the appellant for the replacement of his vehicle, and whether the appellant ought to have been awarded that sum in full as compensation for his loss.

Held: allowing the appeal in part, setting aside the learned judge's findings on ground 2 and substituting the finding of this Court that the appellant is entitled to recover the sum of \$60,000.00 in respect of the replacement value of his vehicle reducing such sum to \$30,000.00 reflecting the appellant's contributory responsibility for the collision, assessed at 50% and making no order as to costs, that:

1. The trial judge is the fact finder and has the benefit of hearing from the parties directly, weighing the evidence, and making factual determinations. Therefore, an appellate court is always loath to disturb the findings of a trial judge. An appellate court will, however, do so if it has been shown that the trial judge was wrong in law or obviously wrong on the facts having had the opportunity to observe and hear the witnesses.

Watt (or Thomas) v Thomas [1947] 1 ALL ER 582 applied; **Augustin Stephen v Sabrina Butcher** SLUHCMAP2022/007 (delivered 9th November 2024, unreported) applied.

2. The learned judge was clearly seized of the inconsistencies and discrepancies in the respondents' case and drew critical adverse conclusions as to the credibility of the second named respondent. The learned judge clearly took into account the totality of the evidence before him weighing the written and oral evidence of the witnesses, the photographic evidence, the point of impact analysis and his observations during the site visit and appropriately evaluated each party's contributory negligence as causative factors in the collision. In this case, while the judge was well aware of the discrepancies in the second respondent's account and made adverse credibility findings accordingly, he was not bound to accept the appellant's version by default. Having formed a reasoned view of how the accident occurred and having properly evaluated each party's contributory negligence, there is no demonstrated error of law or plainly wrong factual finding. Accordingly, the trial judge's apportionment of liability stands, and ground 1 fails.

3. The overarching purpose of the disclosure regime under Part 28 of the Civil Procedure Rules 2000 is to promote fairness and transparency in the litigation process. The respondents' rigid and mechanical application of the disclosure rules produces an unjust and indeed, absurd result, namely, the exclusion of a clearly relevant and material document from the court's consideration solely because of its inadvertent omission from the appellant's List of Documents, notwithstanding that the document had been properly annexed to the pleadings, served on the respondents, and later included in a Supplemental List of Documents. The learned judge erred in failing to consider the valuation report when assessing the appellant's claim for special damages. The appellant's entitlement to claim the replacement value of the vehicle was adequately supported by both documentary and testimonial evidence. That evidence should have been admitted and considered in the assessment of damages. Accordingly, the appeal on this ground is upheld, and the learned judge's finding is set aside.

Part 28 of the **Civil Procedure Rules 2000** applied; **Expendable Ltd. and Others v Rubin** [2008] 1 WLR 1099 applied.

JUDGMENT

- [1] **TAYLOR-ALEXANDER JA [AG.]:** This is an appeal by Celestine Moraine ("the appellant") against the judgment of the learned judge in the court below in a claim for loss and damages arising from a motor vehicle collision. The learned judge held that both the appellant and Wesley Lucas ("the second named respondent") had engaged in dangerous manoeuvres, failing to exercise the requisite due care and attention toward other road users. As a result, the learned judge apportioned liability equally, ruling that each party was entitled to recover 50% of their claimed damages from the other. On 10th July 2025, this Court heard the appeal, the following is the decision of the Court.

Background

- [2] On 1st October 2014, the appellant and the second named respondent were involved in a motor vehicle collision along the Maurice Bishop Highway in Point Salines, St. George's, Grenada. The accident occurred at approximately 7:00 a.m. near the entrance of the former Rex Grenadian Hotel (now Royalton Grenada).

[3] The appellant's evidence was that, at the material time, he was driving in the left lane of the highway heading in the direction of the Maurice Bishop International Airport and observed a Coaster bus traveling ahead of him at a distance of approximately 40 to 50 feet. While there were vehicles behind him, the road ahead was clear, with no oncoming traffic in the opposite lane. As he approached the hotel entrance, the appellant noticed the second named respondent's bus veering toward the extreme left side of the road. Assuming it was safe to overtake, the appellant sounded his horn, activated his right indicator, and began passing the second named respondent's vehicle. During this manoeuvre, however, the second named respondent allegedly swerved abruptly to the right without warning, causing a collision in the roadway. The second named respondent's case is that, while driving on the left side of the highway towards the Maurice Bishop International Airport, he observed the appellant's vehicle some 60 feet behind. Signalling right, he began to turn into the entrance of the Rex Grenadian Hotel when the appellant, without warning, attempted to overtake and collided with him. At trial, the second named respondent modified his account, contending that he was not turning into the Rex Grenadian Hotel but was instead attempting a U-turn. Each party alleged that the collision was caused by the other's negligence and claimed loss and damage.

[4] Although the learned trial judge identified material inconsistencies in the second named respondent's account of the accident, specifically, whether the second named respondent had been attempting to turn right into the hotel driveway or to execute a U-turn into the right lane in front of the entrance, he nevertheless determined that the critical and undisputed fact was the second named respondent's movement of his vehicle into the right lane at the time of impact. Ultimately, the learned judge concluded that the collision occurred when the second named respondent was performing a U-turn into the right lane, while the appellant was simultaneously attempting to overtake in that same lane. The learned judge's reasoning is set out at paragraphs [25] to [27] of the judgment¹. In particular, paragraph [26] records the findings on the appellant's negligence.

¹ GDAHCV2016/0125 (delivered 11th October 2022, unreported).

The learned judge found that the collision occurred while the second named respondent was already turning and near the middle of the road, that the appellant was overtaking at speed in close proximity, and that the appellant was thereby also negligent. Based on the particular facts and circumstances he accepted, the learned judge held that both parties had engaged in dangerous manoeuvres at the time of the incident.

[5] Before the lower court the appellant claimed special damages totalling \$107,561.00, comprising medical expenses of \$1,847.50, loss of income of \$8,400.00, and various losses relating to his vehicle HAE19, including its replacement value of \$60,000.00, loss of use for specified periods amounting to \$14,800.00 and \$15,925.00 respectively, and loan expenses with Republic Bank (Grenada) Ltd. of \$15,000.00 together with associated bank fees of \$400.00 and stamp duty of \$706.00. He further claimed a towing fee of \$172.50, an accident report fee of \$260.00, a police report fee of \$10.00, and the cost of a letter before action in the sum of \$287.50.

[6] In summary, the sums awarded to both parties reflected a 50% reduction from the assessed damages to account for contributory negligence. The court awarded the appellant a total of \$45,903.73, inclusive of pre-judgment interest, comprising medical expenses of \$923.75, loss of income of \$2,941.96, the replacement value of his vehicle in the sum of \$15,000.00, loan expenses of \$8,053.00, loss of use assessed at \$10,000.00, and \$365.00 for towing and related fees, together with interest on special damages at 3% per annum from 1st October 2014 to the date of trial in the sum of \$8,620.02, and further interest on all damages at 6% per annum from the date of judgment until payment. No award for general damages was made to the appellant, the learned judge having found that such damages had not been pleaded. On the counterclaim, the court awarded the first named respondent (SGU) \$24,860.00 for damage to its vehicle and the second named respondent (Mr. Lucas) \$1,616.92 in medical expenses and \$20,000.00 in general damages for pain and suffering, the latter sum reflecting a 50% reduction from an assessed \$40,000.00. Interest was awarded on the combined special damages at 3% per annum from 1st October 2014 to the date of trial in the sum of \$6,112.89, and on the general damages from the

date of service of the claim to the date of trial in the sum of \$3,685.08, resulting in a total award of \$56,274.89 inclusive of pre-judgment interest, with further interest on the global sums at 6% per annum from the date of judgment until payment. Each party was ordered to bear its own costs.

The Appeal

- [7] Dissatisfied with the judgment of the learned trial judge, the appellant filed a Notice of Appeal on 23rd November 2022. The appellant challenges the trial judge's findings of fact and law that: (1) both parties were equally liable for the collision; (2) the appellant bore any liability to slow down and keep a proper look out before conducting the overtaking manoeuvre or at all; (3) both parties were conducting dangerous manoeuvres; (4) the appellant admitted he was speeding since he was in the process of overtaking and the appellant was negligent in his driving; (5) the appellant failed to plead general damages, despite clear assertions of injury and losses in his submissions; and (5) the appellant provided insufficient evidence to support his \$60,000.00 vehicle replacement claim, despite producing a receipt for the accident report and referencing its existence in pleadings. The appellant contends that these findings reflect errors in the learned judge's assessment of liability, his misapplication of evidence and improper disregard of the pleaded claims. In particular, the appellant challenges the following:-

(1) Liability Apportionment:

- i. The trial judge erred in holding the appellant equally liable with the second named respondent despite evidence that:
 - The respondent abruptly executed a U-turn without signalling from the extreme left of the road (contrary to proper lane usage).
 - The appellant's overtaking manoeuvre was reasonable given the respondent's position and lack of indication.

- ii. The learned judge misapplied the case of **McCall v Ogiste**² (distinguishable as no oncoming traffic existed in the present case).
- iii. The learned judge ignored corroborated testimony from the independent witness Brawn Green, who supported the appellant's account of the second named respondent's sudden swerve.
- iv. The learned judge overlooked material inconsistencies in the second named respondent's pleadings vs. trial evidence (e.g., distance between vehicles, nature of manoeuvre).

(3) Duty of Care Findings

- (i) The judge unreasonably held the appellant negligent for:
 - i. Failing to anticipate the second named respondent's U-turn when the second named respondent was improperly positioned in the left lane and gave no signal.
 - ii. "Speeding" during overtaking, despite no evidence proving excessive speed caused the collision.

(4) Failing to award full Special Damages for the Vehicle Replacement

- i. The judge failed to award the appellant special damages in the amount of \$60,000.00 due to "lack of evidence" ignoring:
 - The accident report (referenced as "CM1" in pleadings and disclosed in supplemental documents) that substantiated the pre-collision value.
 - Photographic evidence and officer testimony confirming the vehicle's total loss.

² (1965) 9 WIR 291.

(5) General Damages

- i. The judge erroneously stated the appellant "did not plead" general damages, despite clear assertions in his witness statement (paras. 6, 9) detailing injuries, pain, and lost income.

[8] The appeal against the judge's findings on general damages was abandoned ahead of the hearing of the appeal and consequently the appellant sought the following orders:-

- (1) That the learned judge's findings on the 50:50 liability is set aside and the second named respondent is found 100% liable for the collision, alternatively that liability is adjusted to 25:75 appellant/respondent.
- (2) That the appellant is awarded the full \$60,000.00 for vehicle replacement.

Grounds of Appeal

[9] The issues in dispute can be summarized as follows:

Ground 1: Whether the learned judge erred in apportioning liability equally between the appellant and the second named respondent, and whether the finding of 50:50 liability ought to be set aside and substituted with a finding that the second named respondent is solely (100%) liable for the collision.

Ground 2: Whether the learned judge erred in failing to award the full sum of \$60,000.00 claimed by the appellant for the replacement of his vehicle, and whether the appellant ought to have been awarded that sum in full as compensation for his loss.

Liability Apportionment (Ground 1)

[10] The question of whether liability on the part of the appellant has been established is one of fact and in the context of this appeal, this Court must determine whether it should review and disturb the learned trial judge's findings and conclusions as to liability and impose its own conclusions. The appellant contends that the material inconsistencies in the second respondent's pleadings and trial evidence should have entirely discredited its case. However, the trial judge's equal apportionment of liability was predicated on an independent assessment of both drivers' conduct. Specifically, the judge found that both the second respondent's execution of a U-turn and the appellant's decision to overtake were negligent: the latter manoeuvre was undertaken without due regard for road conditions and the actions and circumstances of the driver ahead. I discern no error in this approach. The judge was clearly well siesed of the inconsistencies and discrepancies in the respondents' case and drew critical adverse conclusions as to the credibility of the second named respondent. However, notwithstanding these findings, the learned judge was obliged to take a holistic view of the evidence before him and it is clear that he did so. The learned judge clearly took into account the totality of the evidence before him weighing the written and oral evidence of the witnesses, the photographic evidence, the point of impact analysis and his observations during the site visit appropriately evaluated each party's contributory negligence as causative factors in the collision.

[11] An appellate court is always loath to disturb the findings of a trial judge. An appellate court will however do so if it has been shown that the trial judge was wrong in law or obviously wrong on the facts having had the opportunity to observe and hear the witnesses. The correct approach to be applied was propounded by Lord Thankerton in **Watt (or Thomas) v Thomas**³ at page 587 of his judgment:

“(1) Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and

³ [1947] 1 ALL ER 582 at p. 587.

heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion.

(2) The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence.

(3) The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court."

[12] Further defining the circumstances at (3), Lord Thankerton explained that:

"The judgment of the trial judge on the facts may be demonstrated on the printed evidence to be affected by material inconsistencies and inaccuracies, or he may be shown to have failed to appreciate the weight or bearing of circumstances admitted or proved, or otherwise to have gone plainly wrong. If the case on the printed evidence leaves the facts in balance, as it may be fairly said to do, then the rule enunciated in this House applies and brings the balance down on the side of the trial judge."

[13] **Watt (or Thomas) v Thomas** provides the following practical guidance:

"It may be well to quote the passage from the opinion of Lord Shaw in *Clarke v Edinburgh & District Tramways Co. Ltd.* (1), which was quoted with approval by Viscount Sankey L.C. in *Powell v Streatham Manor Nursing Home* (2). Lord Shaw said: 'In my opinion, the duty of an appellate court in those circumstances is for each judge of it to put it to himself, as I now do in this case, the question, Am I – who sit here without those advantages, sometimes broad and sometimes subtle, which are the privilege of the judge who heard and tried the case – in a position, not having those privileges, to come to a clear conclusion that the judge who had them was plainly wrong? If I cannot be satisfied in my own mind that the judge with those privileges was plainly wrong, then it appears to me to be my duty to defer to his judgment'."

[14] This dicta has since been applied by this Court in a multitude of cases including **Augustin Stephen v Sabrina Butcher**⁴ where it was stated that:

"[20] ... This Court has repeated on many occasions that it will not easily interfere with a judge's evaluation of the evidence or a judge's findings of fact and inferences of fact made by a judge especially when they depend to a significant extent upon the judge's assessment of witnesses he or she has seen and heard give evidence. The Privy Council in *Beacon Insurance Company Limited v Maharaj Bookstore*

⁴ SLUHCMAP2022/0007 (delivered 9th November 2024, unreported).

Limited stated that occasions meriting appellate intervention would include when a trial judge failed to analyse properly the entirety of the evidence (at para [12]). The Privy Council in *Beacon* expressly approved (at para [13]), the following passage of the decision of the United Kingdom Supreme Court in *Re B (a child) (care order: proportionality: criterion for review)* where it was stated that:

‘52. There is no question of this court interfering with, or indeed being asked to interfere with, the findings of primary fact made by the judge. Bearing in mind that it is a second appeal tribunal, the Supreme Court is virtually never even asked to reconsider findings of primary fact made by the trial judge. The Court of Appeal, as a first appeal tribunal, will only rarely even contemplate reversing a trial judge’s findings of primary fact.

53. As Baroness Hale JSC and Lord Kerr of Tonaghmore JSC explain in paras 200 and 108 respectively, this is traditionally and rightly explained by reference to good sense, namely that the trial judge has the benefit of assessing the witnesses and actually hearing and considering their evidence as it emerges. Consequently, where a trial judge has reached a conclusion on the primary facts, it is only in a rare case, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it. This can also be justified on grounds of policy (parties should put forward their best case on the facts at trial and not regard the potential to appeal as a second chance), cost (appeals on fact can be expensive), delay (appeals on fact often take a long time to get on), and practicality (in many cases, it is very hard to ascertain the facts with confidence, so a second, different, opinion is no more likely to be right than the first).

54. The second and third steps involved in the threshold issue can be combined into the single question of whether the primary facts found and assessments made by the judge were capable of justifying the conclusion he reached that the threshold contained in section 31(2) was satisfied.’

“[21] In the same way, this Court should be slow to reverse a trial judge in their evaluation of primary facts. Lord Hoffman in *Biogen Inc v Medeva plc*, stated at p. 45 as follows:

‘The question of whether an invention was obvious had been called “a kind of jury question” (see Jenkins LJ in *Allmanna Svenska Elektriska A/B v The Burntisland Shipbuilding Co Ltd* (1952) 69 RPC 63, 70) and should be treated with appropriate respect by an appellate court. It is true that in *Benmax v Austin Motor Co Ltd* [1955] AC 370((1955) 72 RPC 39, 42) this House

decided that, while the judge's findings of primary fact, particularly if founded upon an assessment of the credibility of witnesses, were virtually unassailable, an appellate court would be more ready to differ from the judge's evaluation of those facts by reference to some legal standard such as negligence or obviousness. In drawing this distinction, however, Viscount Simonds went on to observe, at page 374, that it was "subject only to the weight which should, as a matter of course, be given to the opinion of the learned judge". The need for appellate caution in reversing the judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance (as Renan said, *la verite est dans une nuance*), of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation. It would in my view be wrong to treat Benmax as authorising or requiring an appellate court to undertake a *de novo* evaluation of the facts in all cases in which no question of the credibility of witnesses is involved. Where the application of a legal standard such as negligence or obviousness involves no question of principle but is simply a matter of degree, an appellate court should be very cautious in differing from the judge's evaluation."

- [15] Although the learned judge formed a clear view as to the credibility and weight which should be accorded to the second respondent's evidence it does not follow that he was obliged to rule in favour of the appellant. The trial judge is the fact finder and has the benefit of hearing from the parties directly, weighing the evidence, and making factual determinations. He clearly formed a view of how the accident would have occurred, whether it could have been avoided and whether each party acted reasonably. This appellant has not demonstrated that the trial judge was wrong in law or obviously wrong on the facts having had the opportunity to observe and hear the witnesses, conducted a site visit and reviewed the photographic and point of impact evidence. Accordingly, the appeal on the apportionment of liability must fail.

Special Damages: Replacement Value of the Vehicle (Ground 2)

- [16] The appellant contends that the learned judge erred in finding that no evidence had been adduced to support the pleaded replacement value of EC \$60,000.00.

He relies on an accident valuation report issued by Pegs Enterprises Ltd., signed by Mr. Cecil “Peggy” Charles and dated 13th October 2014 (“CM1”). This report was annexed to the Statement of Claim and duly served on the respondents at the commencement of the proceedings. It was also expressly referred to at paragraph [12] of the appellant’s witness statement and subsequently identified as Item No. 1 in a Supplemental List of Documents filed on 13th June 2022, to which a copy of the report was attached. The appellant submits that the learned judge ought to have considered this report when assessing special damages and, had he done so, would have awarded the claimed sum of \$60,000.00 as the replacement value of the vehicle.

[17] In response, the respondents rely on Rule 28.13(1) and Rule 26.7(2) of **the Civil Procedure Rules 2000 (“CPR 2000”)**. Rule 28.13(1) provides that where a party fails to give disclosure by the date ordered, that party may not rely on or produce at trial any document not so disclosed. Rule 26.7(2) adds that any sanction for non-compliance takes effect unless the party in default applies for and obtains relief from the sanction, and that Rule 26.9 does not apply. The respondents therefore argues that the appellant, having failed to include CM1 in the initial List of Documents filed by the court-ordered deadline and not having sought relief from sanction, was properly precluded from relying on the report at trial.

[18] The learned judge addressed this issue at paragraph [33] of the judgment. He noted that apart from the pleading, the appellant had failed to provide any evidential basis for the \$60,000.00 valuation. While he acknowledged that the appellant had produced a receipt from Pegs Enterprises Ltd. confirming payment for an accident report, the judge observed that the report itself had not been tendered to the court and concluded that there was no basis on which to properly assess the replacement value of the vehicle.

[19] It is not in dispute, however, that the accident valuation report (CM1) was annexed to the Statement of Claim and served on the respondents from the outset of proceedings. It was also disclosed again by way of a Supplemental List of Documents. Its omission from the earlier List of Documents was

inadvertent and purely administrative. The judge's finding that there was no evidence of the vehicle's value appears to have been based on the mistaken assumption that the report had never been disclosed, when in fact it had been disclosed twice and referred to in the witness evidence.

Disclosure

[20] Rule 28.1(3) of **CPR 2000** provides that a party "discloses" a document by revealing that the document exists or has existed. Additionally, Rule 8.7(3) obliges a claimant, when issuing a claim, to identify in the claim form or statement of claim any document which the claimant considers necessary to their case. The appellant did precisely that: CM1 was annexed to and referenced in the Statement of Claim, satisfying the disclosure obligation under both rules.

[21] Rix LJ in **Expendable Ltd. and Others v Rubin**⁵ at paragraph [24] explained the purpose of disclosure thus:

"The general ethos of the CPR is for a more cards on the table approach to litigation. If a party thinks it worthwhile to mention a document in his pleadings, witness statements or affidavits

..
I look upon the mention of a document in pleadings etc. as a form of disclosure. The document in question has not been disclosed by list, or at any rate not yet, but it has been disclosed by mention in what, for the purposes of litigation, is another important and formal category of documents. If so, then the party deploying that document by its mention should in principle be prepared to be required to permit its inspection, and the other party should be entitled to its inspection."

[22] The overarching purpose of the disclosure regime under Part 28 of **CPR 2000** is to promote fairness and transparency in the litigation process. That purpose is served where all relevant documents, including those adverse to a party's case, are disclosed and made available for inspection timeously. In the present case, both the respondents and the court had been served with the accident valuation report from the date of filing of the Statement of Claim.

[23] The respondents' rigid and mechanical application of the disclosure rules produces an unjust and indeed, absurd result, namely, the exclusion of a clearly

⁵ [2008] 1 WLR 1099.

relevant and material document from the Court's consideration solely because of its inadvertent omission from the appellant's List of Documents, notwithstanding that the document had been properly annexed to the pleadings, served on the respondents, and later included in a Supplemental List of Documents.

[24] I accept the appellant's submission on this point. The learned judge erred in failing to consider the valuation report when assessing the appellant's claim for special damages. The appellant's entitlement to claim the replacement value of the vehicle was adequately supported by both documentary and testimonial evidence. That evidence should have been admitted and considered in the assessment of damages. Accordingly, the appeal on this ground is upheld, and the learned judge's finding is hereby set aside.

[25] The learned judge was satisfied, based on the photographic and documentary evidence before the court, that the appellant had obtained financing in the amount of \$50,000.00 for the purpose of purchasing a replacement vehicle. The judge also accepted, as a necessary and reasonable expenditure, a receipt confirming payment for an accident valuation report. Notably, in the Defence, the respondents did not dispute the damage sustained by the appellant's vehicle as a result of the collision but merely denied liability for the accident itself. In light of the evidence, I find that the pre- and post-collision value of the appellant's vehicle is sufficiently established. Accordingly, I award the appellant the sum of **\$60,000.00** for the replacement value of the vehicle, reduced by **50%** to reflect his contributory responsibility for the collision. The net award to the appellant under this head of damage is therefore **\$30,000.00**.

Disposition

[26] The appeal is allowed in part. The learned judge's finding on Ground 2 is hereby set aside and substituted with the finding of this Court that the appellant is entitled to recover the sum of **\$60,000.00** in respect of the replacement value of his vehicle. However, to reflect the appellant's contributory responsibility for the collision, assessed at **50%**, the award is reduced to **\$30,000.00**.

[27] Both parties have enjoyed some measure of success in this appeal. Given this outcome, I am satisfied that the appeal should be costs neutral and will make no order as to costs.

I concur.
Vicki Ann Ellis
Justice of Appeal

I concur.
Reginald T.A. Armour
Justice of Appeal [Ag.]

By the Court

Chief Registrar