

SAINT LUCIA

**IN THE HIGH COURT OF JUSTICE
(Civil)
A.D. 1998**

SUIT NO: 1004 of 1994

Between:

AUGUSTIN ANTOINE

PLAINTIFF

AND

LAWRENCE GASPARD

DEFENDANT

1998: JANUARY 15
MAY 4

JUDGMENT

Appearances:

Mr D Theodore for the Plaintiff

No appearance of the Defendant

d'Auvergne, J

The Plaintiff filed a claim against the Defendant on the 23rd day of December, 1994 for damages. He pleaded that there was a vehicular collision between his vehicle Registration Number P4186 and that of the Defendant Registration Number 2706 on the Castries/Gros-islet highway and that the said collision was caused through the negligence of the Defendant.

He further pleaded that he intended to rely on the conviction of the Defendant before the First District Court on the 7th of July, 1993, on a charge of driving without due care and attention as evidence of the negligence of the defendant.

The particulars of special damages he pleaded, were as follows:-

Replacement of parts	\$7,236.57
Labour	\$3,150.00
Loss of Use	\$2,100.00
Excess	\$ 900.00

TOTAL	\$13,386.57
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On the 30th of March, 1995 an appearance was entered on behalf of the Defendant and on the 16th of January, 1996 a Certificate of Failure to serve defence, a Notice of Assessment of Damages, and a draft Judgment in default of defence were filed.

On the 26th day of January, 1996 judgment in default was heard and granted.

On 31st January, 1996 the judgment in default of defence pursuant to Order 19 Rule 2 was entered. An Affidavit of Service of these documents was filed by Marie Labadie on the 17th day of April, 1996 and two (2) days later Notice of Hearing in chambers for the assessment of damages awarded by the judgment dated the 26th day of January, 1996 was filed.

On 30th April, 1996 summons and Application for Leave to withdraw as Solicitor supported by an affidavit of Alberton Richelieu was filed.

There were many adjournments for the hearing of the assessment of damages which was eventually heard on the 15th of January, 1998.

At the hearing Peter Jallim a mechanic of Bexon, Castries, told the court that he was a mechanic of 27 years standing having worked in St Lucia and in the United Kingdom.

He said that he repaired the vehicle and tendered a report dated 27th January, 1992 in the amount of Three Thousand One Hundred and Fifty Dollars (\$3,150.00) for material and labour and One Hundred and Fifty Dollars (\$150.00) for "re-changing air condition."

David Fitz told the court that he was employed as the Assistant Sales Manager of Motor and General Insurance Company Ltd and that the Plaintiff's vehicle P4186 was insured with that Company and that under the terms of the contract, the said Insurance had the responsibility for the repair of vehicle Registration Number P4186 which was involved in collision with vehicle Registration Number 2706 owned by Lawrence Gaspard.

He tendered a summary report signed by Peter Jallim for which he told the court the Company paid Fifty Dollars (\$50.00). (No receipt was tendered nor did Peter Jallim make mention of it in his evidence.)

He submitted copies of claim vouchers paid to the Plaintiff dated 18th January, 1992, in the sum of firstly, Six Thousand One Hundred and Five Dollars and Seventy-Seven Cents (\$6,105.77). Another on the 22nd January, 1992 in the sum of One Hundred and Nineteen Dollars and Ninety Cents (\$119.90), a third in the sum of Three Thousand One Hundred and Fifty Dollars (\$3,150.00) paid to Jallim's Garage (Peter Jallim gave evidence of such); a fourth in the sum of Seven Hundred and Forty-Two Dollars and Ten Cents (\$742.10), a fifth voucher in the sum of Five Thousand Three Hundred and Sixty-Three Dollars and Sixty-Seven Cents (\$5,363.67), a sixth certificate for additional parts apart from what were tendered by Peter Jallim of Jallim's Garage in the sum of Nine Hundred and Eighty Dollars (\$980.00), a seventh for further additional parts in the sum of Eight Hundred and Sixty Dollars and Ninety-Cents (\$860.90).

Lastly, he tendered a receipt in the sum of Nine Hundred Dollars (\$900.00) dated 13th January, 1992, marked 'Excess Claim No. 162/1991.'

He also told the court that the vehicle was under repair for fourteen (14) days and a car was rented at One Hundred and Fifty Dollars (\$150.00) per day making a total of Two Thousand One Hundred Dollars (\$2,100.00).

This witness told the court that he was claiming parts amounting to Six Thousand Two Hundred and Twenty-Four

Dollars and Seventy-Seven Cents (\$6,224.77) and that he was only claiming Three Thousand One Hundred and Fifty Dollars (\$3,150.00) as the amount paid to Peter Jallim.

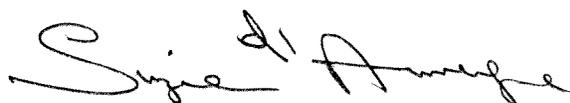
CONCLUSION

As stated earlier the Defendant did not appear and therefore I could only arrive at a determination of the amount expended by the Plaintiff from the evidence led by the witnesses on his behalf.

The Plaintiff claims Seven Thousand Two Hundred and Thirty-Six Dollars and Fifty-Seven Cents (\$7,236.57) for replacement of parts but the Assistant Sales Manager of Motor and General Insurance told the court that the amount paid was actually Six Thousand Two Hundred and Twenty-Four Dollars and Seventy-Seven Cents (\$6,224.77). I have calculated the amount and agree with the figure arrived at. I also agree with the amount of Three Thousand One Hundred and Fifty Dollars (\$3,150.00) paid to Peter Jallim, the same amount as stated in the Statement of Claim, loss of use of vehicle for fourteen (14) days at One Hundred and Fifty Dollars (\$150.00) per day in the amount of Two Thousand One Hundred Dollars (\$2,100.00) and also the excess paid in the sum of Nine Hundred Dollars (\$900.00).

My order is therefore as follows:-

1. The Defendant do pay to the Plaintiff the sum of Twelve Thousand Three Hundred and Seventy-Four Dollars and Seventy-Seven Cents (\$12,374.77) special damages;
2. Five Thousand Dollars (\$5,000.00) general damages;
3. Costs to the Plaintiff to be agreed or otherwise taxed.



**SUZIE d'AUVERGNE
HIGH COURT JUDGE**