THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

SAINT LUCIA

CLAIM NO. SLUHCV2001/0555

BETWEEN:

CLETUS DOLOR

Claimant

and

(1) ALCIDE ANTOINE
(2) ASHLEY DOLOR
(3) COOL BREEZE JEEP RENTAL COMPANY LIMITED
a company duly incorporated under the Laws of St. Lucia and having its registered office at New Development in the Quarter of Soufriere in the Island of St. Lucia

Defendants

Appearances:

Mr. Peter I. Foster, Ms. Estelle George with him for the Claimant
Mrs. Kim C. St. Rose for the First-named Defendant
Mrs. Esther Greene-Ernest for the Second-named Defendant

2003: November 07, 25, December 03
2004: January 30

PERSONAL INJURIES ARISING OUT OF MOTOR VEHICULAR ACCIDENT…WHO WAS LIABLE…NO. 1 OR NO. 2 DEFENDANT OR BOTH…DRIVERS HUGGING THE CENTER LINE…CONTRIBUTORY NEGLIGENCE…WAS EVASIVE ACTION TAKEN BY EITHER OR BOTH…DAMAGES FOR PERSONAL INJURIES…CASES OF ALPHONSE v RAMNAUTH AND FENTON AUGUSTE v FRANCIS NEPTUNE RELIED UPON …DAMAGED FOR PAIN & SUFFERING AND LOSS OF AMENITIES…LOSS OF FUTURE EARNINGS…NURSING CARE… WHO MUST PAY COSTS?

JUDGMENT

1. HARIPRASHAD-CHARLES J: This claim arose out of a road accident which occurred on Saturday, 18th December, 1999 on the Roseau Highway, Anse La Raye when a Suzuki Jeep driven by No. 2 Defendant, Ashley Dolor (Ashley) and owned by No. 3 Defendant was in

collision with a Motor Pickup, Registration No. FAR 102 driven by No. 1 Defendant, Alcide Antoine. The Claimant, Cletus Dolor was one of the passengers on board the Jeep driven by his younger brother, Ashley. The other passenger was his twin brother, Marcellinus. The Dolor brothers are acrobatic dancers. They were returning to their home in Soufriere when the vehicle in which they were traveling got involved in an accident.

2. As a result of the said collision, Cletus who was then 27 years old, was converted from an acrobatic dancer into a quadriplegic. He brought this claim seeking damages for personal injuries suffered.

3. The collision occurred at about two in the morning. There were no street lamps in the area and visibility would have been dependent by means of lights from the vehicles. The vehicles were traveling in opposite directions on what was a straight and smooth piece of road. The road was 19 feet wide at the point of impact, leaving little room for each vehicle in each carriageway. There were reflectors along the center of the road but not where the accident occurred.

4. The two drivers gave diametrically opposed evidence as to how the accident occurred. But it is not disputed that the front of the Jeep came in contact with the motor pickup hitting both the front and back tyres but not the body of the pickup. The right mirror got broken in the process. With the impact, the front tyre got deflated and stuck under the pickup. The back tyre flew out, the whole axel cut off and the front tie rod end got broken. The pickup dragged forward in the road then turned in the opposite direction. The Jeep which is a relatively light vehicle was thrown out of control to the left side of the road off the road then overturned on the right side of the road on a banana tree.

5. Mr. Antoine was injured. He received a blow to his right eye and he could not see out of that eye. The two passengers on board his vehicle escaped unhurt. The other driver, Ashley was not injured. His two brothers, Cletus and Marcellinus were passengers on board his Jeep. They were both asleep at the time of the accident and saw nothing. Marcellinus, seated in the front passenger seat of the Jeep escaped unhurt while Cletus received serious injuries and remained unconscious until the following day. When he regained consciousness, he was at Victoria Hospital.

6. The Jeep was damaged beyond repair. In other words, it was a write-off. The motor pickup was extensively damaged but repairable.

7. On 27th June 2001, Cletus commenced these proceedings against both Defendants claiming damages for personal injuries. He alleged negligence on the part of the Second Defendant, Ashley Dolor or alternatively, negligence on the part of the First Defendant, Alcide Antoine or alternatively, by both Ashley and Mr. Antoine. Cool Breeze Jeep Rental was also joined as the Third Defendant but the claim was not pursued against the Company. In his defence, Mr. Antoine says that the accident was all Ashley's fault. Ashley, in his defence filed on 3rd May 2002, denied negligence and says that it was all Mr. Antoine's fault. Each Defendant relied on particulars of negligence in standard form.

8. The Police were informed of the accident and arrived some 20 minutes later. P.C. 2 Gillpin Langellier was the investigating officer. When he arrived, Mr. Antoine was the only driver present. Mr. Antoine identified himself as the driver of the pick-up. He gave the Officer a brief explanation of how the accident occurred. He said that 'he was driving up the highway on his side and saw a light coming down at him and he heard a "bam" and got a knock on his eye as he tried to pull off the road.' Mr. Antoine also indicated the point of impact to the Officer who used spray paint to mark off the spot.

9. Mr. Antoine complained about the pain in his right eye so Officer Langellier took him to Victoria Hospital. At the hospital, the Officer met Ashley who identified himself as the driver of the Jeep. Ashley gave a brief explanation as to how the accident occurred. He said that 'he was coming down the Roseau Highway on his side. The opposite driver was coming up on his side. Apparently when he arrived by him, he (Mr. Antoine) ended up hitting his (Ashley) vehicle on the right side and the Jeep ended up going off course.'

10. Later that said morning at about 11.00 a.m., Ashley returned to the scene with Officer Langellier. Mr. Antoine was not present. Officer Langellier proceeded to take measurements in the presence of Ashley who positively identified a point of impact to him. Officer Langellier

recollected that it was the exact spot that Mr. Antoine had identified to him and which he had marked with spray paint. Officer Langellier observed a small amount of glass on the road around that point and tyre marks going from about that point to where the vehicles ended up. The point of impact was in the lane in which Mr. Antoine was traveling. Officer Langellier later came to the conclusion that Ashley was responsible for the accident and eventually charged him with careless driving.

11. It is always difficult to decide a case like this where the evidence is so strikingly different. However, the Court was fortunate to hear from Officer Langellier who was called by the Claimant as his witness and who, I have no reason to believe was partial to any of the parties. He stated that the collision took place on Mr. Antoine's side of the road, about two inches away from the imaginary white line. This is congruent with the measurements which he took. The width of the road at the point of impact was 19 feet and the point of impact to the left side of the road facing south was 9 feet 8 inches.

12. The cumulative effect of the evidence of both Mr. Antoine and his passenger, Mr. Urious Charles is that at the time of the collision, they were on their side of the road. Their evidence, though contradictory in certain aspects was clear as to two things. Firstly, that Ashley encroached in their lane and secondly, that about 20 feet away from their vehicle, the Jeep began to encroach into their lane at which time Mr. Antoine pulled further left to avoid the accident.

13. Ashley's evidence is that he was traveling along the Roseau Highway in the direction of Soufriere. He was on his left and proper side of the road. He became aware of another vehicle when he saw the headlamps approaching in the opposite direction heading towards Castries. When the vehicle got close to him, he heard a loud noise and felt an impact on the front right side of his vehicle. The impact threw his vehicle out of control. He said that after the accident, he saw that Mr. Antoine's vehicle had spacers which caused the tyres to project outward beyond that of the standard vehicle. This seems to be an afterthought because it is not pleaded in Ashley's particulars of negligence.

14. Under cross-examination by Ms. George for the Claimant, Ashley stated that he saw the other driver (Mr. Antoine) driving on his side of the road and he (Ashley) was driving on his side of the road. When he was cross-examined by Mrs. St. Rose for the First Defendant, he stated that he saw nothing unusual about the other vehicle and that he did not swerve his vehicle before the collision. He further stated under intense cross-examination:

> "That morning I was driving down home when I saw a vehicle approaching. From a distance, I saw him coming round the bend. He was on his side of the road, driving normal. All of a sudden, I felt an impact and that is when I felt the vehicle rolling to the other side of the road and that is where it stopped in the banana field. I never saw the First Defendant leave his side of the road and come on my side. I only realized that something was wrong because of the impact. I ended up under the bananas on the First Defendant's side of the road. I was not in a hurry to get to Soufriere."

15. Ashley's account of the accident seems loose and open-ended. This is borne out at paragraph 4 of his witness statement and in particular, to the uncontroverted evidence of what he told Officer Langellier shortly after the accident. He said that 'he was coming down the Roseau Highway on his side. The opposite driver was coming up on his side. ***Apparently*** (my emphasis) when he arrived by him, he (Mr. Antoine) ended up hitting his (Ashley) vehicle on the right side and the Jeep ended up going off course.'

16. On the totality of the evidence, I find as a fact that the collision took place on Mr. Antoine's side of the road. It logically followed that Ashley encroached in Mr. Antoine's lane as he himself admitted that he saw the First Defendant driving on his proper side of the road in the direction of Castries and he saw nothing unusual about his driving. This finding is also consistent with the state of the evidence at the end of the Claimant's case.

LIABILITY

Negligence

17. Article 985 of the Civil Code establishes the authority for imputing damages and it reads:

> "Every person capable of discerning right from wrong is responsible for damage caused either by his act, imprudence, neglect or want of skill, and he is not relievable from obligations thus arising."

18. Article 917A provides for the reception into the Laws of St. Lucia of the Laws of England as they relate to torts.[1]

19. In running down accidents, when two parties are so moving in relation to one another as to involve the risk of collision, each owes the other a duty to move with due care, and that is true whether they are both in control of vehicles, or both proceeding on foot, or whether one is on foot and the other controlling a moving vehicle.[2]

20. I have already found that Ashley encroached in Mr. Antoine's lane and as a consequence, he is responsible for the accident. He is equally liable for the injuries he caused to Cletus. He owes a duty of care to Cletus and it is reasonably foreseeable that if he fails to exercise that degree of care and skill and drives his motor vehicle as a reasonable and prudent driver would, being the duty not to encroach into Mr. Antoine's side of the road, that he would injure Cletus.

Contributory Negligence

21. Mrs. Ernest, Counsel for Ashley vigorously argued that Mr. Antoine and Ashley are equally to be blamed for the accident in that Mr. Antoine was in breach of that duty of care to drive with the degree of skill and care to be expected of a competent and experienced driver. She submitted that on the morning in question, Mr. Antoine did not only drive too fast but he failed to keep left or on the proper side of the road and also failed to stop, slow down or swerve in order to avoid the collision. Counsel based her submission on the English authorities of *Baker v Market Harborough Co-operative Society Ltd, Wallace v Richards (Leicester)*[3]*, Kirk v Parker*[4] and *Day v Smith*[5]. In Baker's case, it was held that the inference was that both drivers were negligent in not keeping a proper lookout and hugging the center of the road. In the absence of evidence that one was more to blame than the other, the blame should be apportioned equally. Assuming that one vehicle was over the white line a few inches, and thus to blame, why did not the other pull in more to its nearside? The absence of any avoiding action makes the vehicle

[1] Northrock Ltd v Jardine and another (1992) 44 WIR 161 per Floissac CJ
[2] Nance v British Colombia Electric Ply Co. Ltd. (1991) 2 All ER 448
[3] [1953] 1 WLR 1472
[4] 60 LIL Rep 129
[5] (1983) 133 NLJ 726 QBD

also to blame. It was therefore not necessary to prove that the other vehicle was over the cat's eyes. It was sufficient to show that the defendant should have taken avoiding action.

22. *Kirk v Parker* reinforces the principle that evasive actions should be taken in order to avoid a collision. Mrs. Ernest argued that the evidence of Officer Langellier is that the collision occurred about two inches from the imaginary white line on Mr. Antoine's side of the road and that both drivers were driving at approximately 50 m.p.h. She next argued that there is no reliable evidence that Mr. Antoine took any avoiding action.

23. Both Mrs. St. Rose and Ms. George submitted that Baker's case is distinguishable from the present case. Mrs. St. Rose helpfully provided the court with the case of *Duncan Edwards v Carol Bridson (1998) EWCA Civ 724* which is directly on point with the present case. In *Duncan Edwards case*, the accident occurred near the center line of the road. The primary issue which had to be resolved was whether the collision occurred as a result of the claimant crossing over the center white line, or the defendant crossing over the line; in other words, which vehicle was partially on the wrong side of the road. *Baker's* case was cited. Lord Justice Swinton Thomas reiterated the principle enunciated by Denning LJ at page 1476:

> "In the absence of any evidence enabling the court to draw a distinction between them, they must be held both to blame, and equally to blame… So much seems so clear on principle that it is unnecessary to go further, but I would like to say that the evidence to my mind makes it much more likely that both were to blame than that only one was to be blame. It shows that each driver kept his course, with his off-side wheels on or over the center line of the road. There was room for each of them to pull into his near-side of the road, but neither did so. There was not the slightest trace of any avoiding action taken by either-no brake marks, no swerve, no hooter, nothing. Assume that one of the vehicles was over the center line a few inches, and thus to blame, why did not the other one pull more to its near side? The absence of any avoiding action makes that vehicle also to blame."

24. In my considered opinion, there are very clear distinctions between *Baker's* case and the present case. In *Baker's* case, there was no evidence that one or the other vehicle was on the wrong side of the road. *Baker's* case was clearly a case decided on its own particular facts. The primary distinctions between this case and *Baker's* case, to my mind, is that Ashley's vehicle did encroach on the wrong side of the road and that Ashley took no evasive actions to

avoid the accident whereas Mr. Antoine painstakingly described the avoiding actions he took; albeit too late.

25. As a matter of generality, I would accept that it is better to keep reasonably near to one's near side of the road, as opposed to driving close to the center of the road or close to the center line. On the facts of this case, Mr. Antoine was driving on his side of the road. There was a sudden unplanned change of direction by Ashley and as a result, the collision took place.

26. I therefore find that Ashley is solely liable for the collision.

PERSONAL INJURY
General Damages

27. The assessment of damages for injuries sustained as a result of an accident falls under two heads: general and special damages. In the case of *Cornilliac v St. Louis*[6], it was stated that the factors which ought to be borne in mind in assessing general damages are:

(a) The nature and extent of the injuries sustained;
(b) The nature and gravity of the resulting physical disability;
(c) The pain and suffering which had been endured;
(d) The loss of amenities suffered and
(e) The extent to which, consequently the injured person's pecuniary prospects have been materially affected.

The Nature and Extent of the injuries sustained

28. The evidence disclosed, that as a result of the accident, Cletus Dolor who was then 27 years old is now a quadriplegic. He sustained a fracture/ dislocation of the 5th cervical vertebra on the 6th cervical vertebra. The clinical diagnosis was of the spinal cord (complete) injury with quadriplegia secondary to fracture dislocation of the 5th cervical vertebra on the 6th cervical vertebra. His latest medical review as contained in the medical report of Dr. Richardson St. Rose dated 20th May 2003 reveals "minimal forearm movements were allowed by grade 2/5 power in elbow flexors". His lower limbs remain paralysed and he remained confined to a

[6] (1965) 7 W.I.R. 491

wheel chair. The doctor testified that Cletus' condition is such that he will never walk again. He is now 31 years old and completely helpless.

(a) Pain and Suffering and Loss of Amenities

29. Dr. St. Rose, a fully qualified medical doctor for the past 33 years and a Specialist in the area of General Surgery and Orthopaedics for the past 23 years testified that Cletus would never be able to walk again.

30. From the evidence, it is palpably clear that Cletus cannot do anything for himself. He spends most of his days in a wheel chair with special convoluted foam behind him for support. He has to be bathed, cleaned and fed. He drinks from a straw with someone holding the glass for him.

31. He uses pampers and a catheter. He still experiences pain in his neck. When he laughs or excites himself too much, he feels a pain in his neck and gullet. Coupled with all of that, he often gets bedsores.

32. Before I delve any further into the case, I pause to observe that Counsel have all agreed that the Saint Lucian case of *Fenton Auguste v Francis Neptune*[7] is the authority on personal injuries and the facts are affined to the present case. I do not disagree.

33. On the issue of pain and suffering, Mrs. St. Rose submitted that the sum of $75,000.00 is reasonable in the circumstances. She relied heavily on *Fenton Auguste* case. So did Mrs. Ernest. On the other hand, Ms. George states that in the present case, Cletus who was an acrobatic dancer is now completely helpless and in a state of quadriplegia. She argued, quite correctly that the injuries suffered by Cletus is much more serious than that suffered by Fenton Auguste.

34. Obviously, damages for pain and suffering are incapable of exact estimation and their assessment must necessarily be a matter of degree, based on the facts of each case. They must be assessed on the basis of giving reasonable compensation for the actual and

[7] Civil Appeal No. 6 of 1996 (unreported) (Saint Lucia)

prospective suffering entailed including that derived from the plaintiff's necessary medical care, operations and treatment.

35. I am in agreement with Ms. George that the damages awarded in *Fenton Auguste* case cannot be the same as in this case. The facts and circumstances are different. First and foremost, I disagree with Mrs. St. Rose when she equated a paraplegic to a quadriplegic. They are not and could not be the same. I would make an award of $100,000.00 for pain and suffering. I think that this amount is reasonable taking into consideration the nature and extent of the injuries which Cletus sustained, his personal awareness of pain and his capacity for suffering.

36. In terms of loss of amenities, it is authoritatively settled that it is in respect of the objective loss of amenities that the damages will be determined. Hence, loss of enjoyment of life and the hampering effect of the injuries in the carrying on of the normal social and personal routine of life, with the probable effect on the health and spirits of the injured party, are all proper considerations to be taken into account. Amongst the loss of the amenities of life, there are to be considered: the injured person's inability to engage in indoor and outdoor games, his dependence, to a greater or lesser extent, on the assistance of others in his daily life[8]; the inability to cope by looking after, caring for and rendering the accustomed services to a dependent; his sexual impotence[9]; any prejudice to the prospects of marriage[10] and his inability to lead the life he wants to lead and was able to lead before the injuries.[11]

37. In the present case, Cletus was an active healthy young acrobatic dancer before the accident. He did not only perform at hotels but at various cultural and variety shows, public functions, festival of lights and even at political rallies. He had a normal and active sex life prior to the accident but this is no longer possible. His girlfriend has now left him and took away their two children. The prospects of marriage are virtually non-existent.

38. For Loss of Amenities, I consider the sum of $150,000.00 to be reasonable.

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[8] Heaps v Perrite Ltd [1937] a All E.R. 60, where a young labourer lost both his hands and would required daily assistance
[9] Cook v J.L.Kier & Co. Ltd. [1970] 1 W.L.R. 774
[10] Moriarty v McCarthy [1978] 1 W.L.R. 155
[11] Heaps v Perrie (supra)

(b) Loss of Future Earnings

39. As regards the assessment of general damages in respect of future loss of earnings, there are a number of uncertainties, which have to be brought in and these, necessarily, make their calculations more imprecise. They include such matters as the probable length of time that the claimant's future incapacity, his prospects of obtaining employment and the normal hazards of life. To reach a figure for the award of a lump sum, the normal method of assessment which is used by the courts, is first to calculate, as accurately as possible, the net annual loss suffered, which is usually based on an average of the claimant's pre-accident "take-home" pay. This is to be used as the multiplicand.

The Multiplicand

40. At paragraph 16 of his witness statement, Cletus claims that "as a group we got paid between $315.00 to $450.00 nightly. After necessary deductions, we *each* earned a little over $2,000.00 monthly from our performances at the hotels." He also claims to be involved in construction work, painting, plumbing and carpentry and earns $75.00 per day. No evidence was adduced to substantiate the frequency of the latter allegation. It is trite law that the Claimant must prove his case. His alleged employment as a construction worker and its frequency come into question especially since he also alleges that he is a housewife.

41. Mrs. Ernest submitted that Cletus did not have permanent dependable employment. She submitted that as a construction worker, he would work on an ad hoc basis whenever jobs became available and in the tourism industry, his employment is seasonal. This must also be construed against the background that since St. Lucia is pursuing an active tourism campaign aimed at increasing tourists arrival on the island, there may be many more hotels on the island making Cletus a more demanding acrobatic dancer.

42. I would accept Cletus' evidence that he earns $2,000.00 per month as an acrobatic dancer. In terms of employment in the construction industry, he has not produced cogent evidence to substantiate this allegation. By applying simple mathematics, his annual earnings would be $24,000.00. I would fix the multiplicand at $24,000.00. I am conscious of the principles

enunciated in *Cookson v Knowles*[12] and followed in *Alphonse v Ramnauth*[13] and *Fenton Auguste's* case, that for the purpose of arriving at the multiplicand, the basis should be the least amount that Cletus would have been earning if he had continued working without being injured.

The Multiplier

43. In *Alphonse v Ramnauth, Singh J.A.* said:

> "In determining the multiplier, a Court should be mindful that it is assessing general and not special damages. That it is evaluating prospects and that it is a once for all and final assessment. It must take into account the many contingencies, vicissitudes and imponderables of life. It must remember that the plaintiff is getting a lump sum instead of several smaller sums spread over the years and that the award is intended to compensate the plaintiff for the money he would have earned during his normal working life but for the accident."

44. Cletus did not adduce any evidence as to his probable working life. Given the nature of his occupation, his working life as an acrobatic dancer may hardly extend to beyond 50 years. As a painter, perhaps, 60 but there is no evidence as to the frequency of his employment as a painter.

45. Applying the principles laid down in the cases of *Alphonse v Ramnauth* and Fenton *Auguste's* case (supra), I would give Cletus a working life of 60 years and fix a multiplier of 16.

46. Using a multiplier of 16 and a multiplicand of $24,000.00, the award under this head is $384,000.00.

(c) Nursing Care

47. In giving oral testimony to the Court, Dr. St. Rose stated that Cletus would require sixteen hours of daily nursing care for the rest of his life.

[12] (1979) AC 556
[13] Civil Appeal No. 1 of 1996 (unreported) British Virgin Islands

48. Cletus intended to call Marie Henry, a fully qualified nurse with 29 years nursing experience as his witness. In fact, he filed her witness statement. Unfortunately, she did not appear on the date of trial to be cross-examined as required. The Court is therefore unable to attach much weight to her witness statement which has not been tested in cross-examination.

49. I am left with no other alternative but to accept with gratitude the reasoning enunciated by Singh J.A. in Fenton Auguste's case and award Cletus $60.00 per day or $21,900.00 per year ($60.00 x 365 days). Some adjustment should be made for the contingency that his condition may improve. I would use a multiplier of 10. My award under this head is therefore $219,000.00.

(d) Pampers and Catheter

50. Cletus remains paralysed and unable to move. He continues to use pampers. He is unable to urinate and continue to use a catheter. He sometimes eases his bowels without realizing it and other times, his twin brother has to help him to do so. This evidence is uncontroverted. The cost of pampers as suggested by the Claimant is also uncontroverted. I would therefore accept the figure of $287.50 as the monthly cost of pampers or $3,450.00 annually. With a multiplier of 16 and not 10 (since I think that he will have to use pampers for the rest of his life) I would make an award of $55,200.00.

51. The monthly cost of catheter is $108.00 or $1,296.00 annually. Using the multiplier of 16, I would make an award of $20,736.00 making an aggregate of $75,936.00.

52. In total, the amount of general damages to be awarded in this claim is $928,936.00. However, this being a lump sum payment and taken into consideration the vagaries and imponderables of life, I would scale down this figure to $900,000.00.

Special Damages

53. In his amended statement of claim, Cletus particularized special damages at $98,983.90. This was computed on the basis of his monthly earnings being $2,885.00. Based on the evidence adduced, I have reduced his monthly earnings to $2,000.00. Consequently, his claim for

special damages is reduced by $21,240.00 leaving a remainder of $77,743.90. Accordingly, Cletus would be entitled to an aggregate of $77,743.90 as special damages.

The Outcome

54. The outcome is as follows:

(a) Pain, Suffering and Loss of amenities	$250,000.00	Interest at the rate of 6% per annum from date of service of claim form to date of trial: Nov.7 2003
(b) Loss of Future Earnings	$384,000.00	No interest
(c) Nursing Care	$219,000.00	No Interest
(d) Pampers and Catheter	$75,936.00	No Interest

TOTAL GENERAL DAMAGES in the amount of $928,936.00 has been scaled down to $900,000.00.

SPECIAL DAMAGES	$77,743.90	Interest at the rate of 3% per annum from the date of the accident 18th Dec. 1999 to date of trial-Nov. 7, 2003.

55. The total global sum awarded to Cletus Dolor will be $977,743.90 with interest at a rate of 6% per annum from the date of judgment to the date of payment.

56. I make no deductions for Income Tax or NIS Contributions as no evidence was adduced in that regard.

Costs

57. Sir Dennis Byron, Chief Justice in the recent judgments of *Rochamel Construction Limited v National Insurance Corporation*[14] and *Saint Lucia Furnishings Limited v Saint Lucia Co-operative Bank Limited et al*[15] laid down some guidelines in dealing with Costs in accordance

[14] Civil Appeal No. 10 of 2003 (unreported) Saint Lucia
[15] Civil Appeal No. 15 of 2003 (unreported) Saint Lucia

with the Rules. As a result, Counsel were encouraged to assist the Court in the making of the Cost Order by providing submissions.

58. Mrs. Ernest attractively argued that the Claimant should bear the Costs to the First Defendant because all along, he was aware that the Second Defendant should have been the only party before the court and as such, the First Defendant was unnecessarily joined.

59. Mrs. St. Rose argued that since the Claimant instituted the claim against the two Defendants and has been unsuccessful against the First Defendant, then the Claimant should be held responsible for the Costs of the First Defendant: see Rule 64.6(2). She next argued that in deciding who should be liable to pay the costs, the conduct of the parties before and during the proceedings and the manner in which a party has pursued a particular allegation, issue or the case as a whole is important.

60. I agree entirely with Mrs. St. Rose. From the date of the filing of his defence, the Second Defendant maintained that he was not responsible for the accident and alleged that it was the First Defendant who was negligent. Although the Second Defendant did not initiate these proceedings, by virtue of his allegations, he kept the First Defendant as an active participant in this claim.

61. I am of the view that the claim against the First Defendant could have been dismissed at Case Management had it not been for the defence of the Second Defendant.

62. In my judgment, the Second Defendant must bear the Costs to the Claimant as well as to the First Defendant.

63. At Case Management, the Learned Master ordered that Costs be Prescribed Costs. If I make such an award under Part 65.4 of the Rules, then the parties could well receive about $100,000.00 in Costs. I do not think that the nature and complexity of the case warrants such a hefty sum. Instead, I would exercise my discretion under Part 65.5(4) and award a proportion

only. Both the Claimant and the First Defendant have tacitly agreed to accept a reduced amount of $20,000.00.

CONCLUSION

64. In the end, the Order of this Court is as follows:

    (1) That there be judgment for the Claimant in the sum of $977,743.90 with interest at a rate of 6% per annum from the date of judgment to the date of payment.

    (2) Costs to the Claimant in the sum of $20,000.00 to be paid by the Second Defendant.

    (3) Costs to the First Defendant in the sum of $20,000.00 to be paid by the Second Defendant.

65. Last but not least, I am grateful to all Counsel for their industry and immeasurable assistance to this Court.

INDRA HARIPRASHAD-CHARLES

High Court Judge