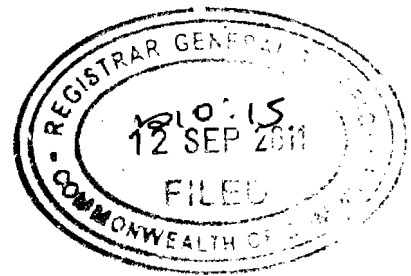


The Eastern Caribbean Supreme Court

In the High Court of Justice

Commonwealth of Dominica

DOM HCV 2009/0101



Between:

MC PHERSON BARBER

Claimant

and

MEYONA SAMUEL

Defendant

Before the Hon. Justice Brian Cottle

Appearances:

Mrs. Dawn Yearwood-Stewart Counsel for the Claimant

Ms. Lisa De Freitas Counsel for the Defendant

2011: 14th April

12th September

Judgment

[1] **COTTLE J:** The Claimant was riding his motor cycle along the Canefield public road. He was travelling in a northerly direction. The Defendant was driving her sports utility vehicle along the same road in a southerly direction. It was the early afternoon of 22nd November 2006. The weather was sunny and the roadway was dry.

[2] The Defendant says she stopped in the eastern lane of the road and, by use of her indicator lights, she signaled her intention to turn right into a tyre repair establishment. Having assured herself that there was no oncoming traffic she began her turn. It was at this point she says that she noticed the Claimant approaching on his motor cycle. He was travelling quickly. She came to a stop in the eastern lane with her vehicle facing west. The Claimant fell from his motor cycle. He rolled on the ground for several feet before coming to a stop. The

Defendant, who is a nurse, went to the aid of the Claimant and took him to the Princess Margaret Hospital where he was treated.

- [3] The Claimant's version of events differs. He says he was riding his motorcycle at moderate speed in a northerly direction along the Canefield public road. The Defendant, who was driving in the opposite direction, suddenly made a "U" turn into his lane of traffic. He attempted to take evasive action to avoid collision. He fell to the ground and sustained injuries.
- [4] The Defendant had two small children and her teenaged niece as passengers. The niece gave evidence which supported her aunt.
- [5] The Canefield public road, in common with most roads in the Commonwealth of Dominica, is not particularly broad. It is this fact which causes me to prefer the evidence of the Claimant. It is unclear whether the Defendant intended to perform a "U" turn or merely to turn right into the business place on the western side of the road. What is clear is that she must have come into the northbound or western lane of traffic. There simply is not sufficient room for her vehicle to be at a right angle to the flow of traffic while remaining entirely in the eastern or south bound lane. It is this intrusion into the oncoming lane which caused the Claimant to fall in his effort to avoid colliding with the Defendant's vehicle. It was the duty of the Defendant to ensure she was able to complete her turning maneuver safely before she embarked upon it. She failed to perform that duty.
- [6]. There is also some confusion about the injuries sustained by the Claimant. At the Princess Margaret Hospital he was assessed. X-rays taken did not reveal any bony injuries; merely soft tissue damage. The Claimant was discharged.
- [7]. Some two weeks later the Claimant continued to experience discomfort. He visited the Orthopedic Specialist, Dr. Julien De Armas. A new x-ray was ordered. This revealed an undisplaced fracture of the ankle. The joint was encased in plaster of Paris for six weeks and has now completely healed.
- [8]. The Defendant suggests that the interval of two weeks between the time the new x-rays were done and the date of the accident should excite the suspicion of the court. Counsel for the Defendant argues that any intervening event could have caused the fracture. No evidence was led that there was any such event. In the amended defence the Defendant does not admit the particulars of injuries. However CPR 2000 Part 10.6 (2) (b) requires a Defendant who disputes a medical report on injuries annexed to a claim form or statement of claim, to indicate the

nature of the dispute. In the present case the Defendant failed to indicate the nature of the dispute. This court accepts the evidence of the Claimant that the injury he received was in fact sustained in the accident.

[9]. Special damages

The need to plead, particularize and prove items of special damages has been emphasized repeatedly in these courts. The Claimant sought seven thousand dollars (\$7000) but has failed to substantiate much of this.

There is no evidence of his earnings. No salary slips or bank statements or any other supporting documentation attest to his lost earnings. I thus reject the claim for three thousand (\$3000) loss of earnings. So too do I reject the Claim for nursing care which was completely unsubstantiated.

Two documents were produced. The court accepts the receipt showing payment of eighty dollars [\$80] for x-rays. The 'invoice' for motor cycle repairs is rejected. It is not dated. It does not show that the person who prepared it is in the profession of vehicle repairs and clearly does not emanate from any known commercial firm. It is simply not satisfactory.

Only the sum of eighty dollars [\$80] is allowed as special damages.

[10] General damages

Pain suffering and loss of amenities

No special loss of amenities is pleaded. The injury was of a transient nature and the Claimant has recovered without any adverse sequelae. The principles which govern awards for personal injuries are laid down in Cornilliac v. St. Louis 7 WIR 491. They are well known. I do not repeat them here.

Both Counsel referred the court to a number of authorities as guidance for an appropriate award. The court is grateful.

[11] After due consideration I have concluded that an apt award to the Claimant in this case is ten thousand dollars (10,000).

[12] Judgment is entered for the Claimant for ten thousand eighty dollars (\$10,080) plus costs on the prescribed scale of \$3,024.00.


Brian S. Cottle
High Court Judge

