

**IN THE EASTERN CARIBBEAN SUPREME COURT
HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

CLAIM NO. NEVHCV2004/0150

BETWEEN:

ERIC LAWRENCE

Claimant

and

TAUREEN DAVID

Defendant

Appearances:

Mr Patrice Nisbett *for the Claimant*

No appearance of *the Defendant*

2006 : June 9;

2012 : April 19.

ASSESSMENT OF DAMAGES

Introduction

- [1] **LEIGERTWOOD-OCTAVE J [AG]:** The Claimant, Eric Lawrence [**“Mr. Lawrence”**] is the owner of Motor Vehicle RA 126, which was one in a fleet of vehicles that he used in his rental business. The vehicle was hired by the Defendant, Taureen David [**“Mr. David”**]. One of the terms of the written agreement entered into by the parties on 19th September 2004, was that Mr. David would be responsible for any damage caused to the vehicle during the period of hire.
- [2] On 21st September 2004, when Mr. David was driving the vehicle along the Island Main Road, in the vicinity of Hamilton Estate, it overturned and was extensively damaged. According to Mr. Lawrence the collision due to Mr. David’s negligent driving.
- [3] On 19th November 2004, Mr. Lawrence commenced proceedings against Mr. David to recover the cost of repairs to his vehicle in the amount of \$19,342.00 and loss of profits.
- [4] Mr. David having been served with the Claim, failed to file an Acknowledgement of Service and Mr. Lawrence obtained Judgment in Default of Acknowledgement of Service on 30th December 2004 with damages to be assessed by the court.

- [5] When the matter came on for assessment of damages, Mr. David did not appear. Mr. Nisbett, who had filed skeleton submissions, appeared on behalf of the Mr. Lawrence.
- [6] In his submissions, Mr. Nisbett established that Mr. Lawrence was entitled to recover all damages that were reasonably foreseeable as a result of Mr. David's negligent actions and that the measure of damages was the amount by which the value of the goods damaged had diminished together with any consequential loss arising out of the damage¹.
- [7] He referred to a case from the Federation and the judgment of Smith J² where he stated:
- 'It is the law in St. Kitts and Nevis that a successful Plaintiff is entitled to have his vehicle put back in the same position after a collision in which the vehicle has been damaged as it was before the collision. And this is usually fully accomplished by having the liable Defendant completely repair the damage suffered.'*
- [8] As proof of the extent of the damage to the vehicle, he relied on a report from Mr. Keith Roderiquez, a qualified mechanic. In his report Mr. Roderiquez gave a full description and cost of the materials and the labour charges required to repair the vehicle. He gave a total estimate of \$19,324.00.
- [9] On the issue of loss of profits, Mr. Nisbett relied on established principle that a sum for loss of profits is a proper item in damages where a chattel is detained for repairs if such loss is proved by the Claimant³. He submitted that the measure of damages under this head is the sum which represents the loss of earnings which would have ordinarily been derived from the use of the chattel during the time it was under repair and therefore was not available for use.
- [10] If the court determines that a claimant should be awarded damages for loss of use, it must then go on to determine what period of time should be covered. Mr. Lawrence has claimed \$125.00 per day for a period of two months. To buttress his argument that the court should find in favour of what was claimed, Mr. Nisbett submitted the case of **Michael Davis v Keithroy Blackman and Glenville Woodley**⁴ as a comparison. In that case Bruce Lyle J ordered that two months was a reasonable period for loss of use where the Plaintiff's vehicle had been damaged in a traffic accident.
- [11] He emphasized the fact however that unlike the Plaintiff in the **Michael Davis**⁵ case, who sought compensation in relation to a non-profit earning chattel, this case involves one which was profit earning. I accept that the vehicle is one of the fleet in Mr. Lawrence's rental business.
- [12] Having considered the authorities and the submissions, it is my judgment that Mr. Lawrence is entitled to loss of use at the daily rate of \$125.00 and over the 60 day period claimed, for a total of \$7,500.00.

¹ Mc Gregor on Damages 14th Ed. at para. 998

² Eustace Hobson v Ben and Tecla Francis et al Civil Suit No. 150 of 1995 St. Christopher and Nevis [St. Christopher Circuit]

³ Ibid at para. 1007

⁴ Civil Suit No. 148 of 1999 St. Christopher and Nevis [St. Christopher Circuit]

⁵ Ibid

- [13] I agree with Mr. Nisbett that Mr. Lawrence is entitled to costs on the damages award in accordance with **Part 65 Appendix C** of the **Civil Procedure Rules of the Eastern Caribbean Supreme Court 2000**.
- [14] For the reasons that I have stated, I make the following order:
1. Damages are awarded to Mr. Lawrence against Mr. David as follows:
 - i. Cost of repairs \$19,342.00
 - ii. Loss of profits \$ 7,500.00
 2. Mr. David is to pay Mr. Lawrence prescribed costs on the total damages of \$26,842.00 awarded in the sum of \$8052.60.

LANTHEA LEIGERTWOOD-OCTAVE
High Court Judge [Ag]