

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO. : ANUHCV 0166/2009

BETWEEN

GODDARD CATERING GROUP (ANTIGUA) LTD.

1st Claimant

TONYA LAYNE

2nd Claimant

AND

STEVE BROWN

Defendant

Appearances:

Mrs. Fidela Corbin Lincoln for the Claimants
Mr. John Fuller for the Defendant

2012: March 5
July 26

JUDGMENT

[1] **REMY J.:** On the 1st day of April 2006, a vehicular collision occurred between vehicle No. A17034 owned by the First Claimant and driven by the Second Claimant, and vehicle No. A3814 owned and driven by the Defendant. The Claimants allege that the accident was caused and/or contributed to as a result of the Defendant's negligence. They claim damages for personal injuries and consequential loss. The Defendant denies that the accident was caused as a result of his negligence. He contends that the collision was caused solely by the Second Claimant and he counterclaims for damages

for personal injuries and consequential loss suffered by him as a result of the said collision.

[2] The issues that fall for the Court's consideration are as follows:-

- i). Who was liable for the accident which occurred on the 1st day of April 2006? In other words, was the accident caused as a result of the negligence of the Second Claimant or of the Defendant?
- ii). Was there contributory negligence by either of the parties, and if so, in what proportion?
- iii). What is the amount of compensation payable to the Claimants or the Defendant?

[3] In her Statement of Claim, the Claimant pleads that she was travelling along Cedar Grove Main Road in a westerly direction when, on approaching the intersection of Cedar Grove Main Road and Friar's Hill Main Road which was to her left, the Defendant, while travelling from south to north along Friar's Hill Main Road, drove onto Cedar Grove Main Road when it was not safe to do so. In her "Particulars of the Defendant's Negligence" she states as follows:-

"The Defendant was negligent in that he:

- (a) Failed to keep any or any proper look out;
- (b) Failed to see the Second Claimant in time or at all;
- (c) Failed adequately or at all in time or at all to heed or act upon the presence, path, position and approach of motor car A17034 which was being driven by the Second Claimant
- (d) Failed to accord precedence to the Second Claimant as she drove along the Cedar Grove Main Road;
- (e) Emerged out of Friar's Hill Road when it was unsafe to do so by reason of the presence, path, position and approach of motor car A17034 which was being driven by the Second Claimant;
- (f) Failed to stop and wait at the stop sign at the intersection of Friar's Hill and Cedar Grove Main Road before attempting or commencing to emerge onto the Cedar Grove Main Road;

- (g) Failed to heed or act upon the road signs and road markings requiring the Defendant to accord precedence to the Second Claimant and other traffic travelling along the Cedar Grove Main Road;
- (h) Drove into the path of and collided with A17034 which was being driven by the Second Claimant;
- (i) Failed by means of his lights or horn or otherwise howsoever to warn the Claimant of his approach and/or intentions;
- (j) Positioned himself in the far left lane while at the intersection (which lane is for vehicles intending to turn left onto the Cedar Grove Main Road), when his intention was to make a right turn;
- (k) Failed to accord precedence to the two other vehicles which were ahead of him and which were waiting to make a right turn onto the Cedar Grove Main Road;
- (l) Failed to apply his brakes in time or at all;
- (m) Failed to stop, slow down, to swerve or otherwise to manage or control his vehicle as to avoid colliding with the Second Claimant, and
- (n) Exposed the Second Claimant to foreseeable risk of injury.”

[4] The Claimant alleges that as a result of the collision, she suffered injuries and claims:-

- i). Special damages of EC \$147,953.51
- ii). General damages;
- iii). Interest;
- iv). Such further and other relief as the Court deems just
- v). Costs.

[5] In his Defence and Counterclaim filed on the 30th April 2009, the Defendant pleads that he was travelling from Friar's Hill Road and upon arriving at the intersection with Cedar Grove Main Road, made and completed a right turn onto the Cedar Grove Main Road. He pleads that the Second Claimant was driving along the Cedar Grove Main Road at an excessive speed of approximately 80 miles per hour and collided with the Defendant on the Defendant's designated side of the Cedar Grove Main Road. He claims that the collision was caused solely by the negligence of the Defendant, which he states in his "Particulars of the Second Claimant's Negligence" are as follows:-

- (a) Failing to remain on her designated side of the road;
- (b) Driving the vehicle onto the Defendant's side of the road;
- (c) Driving too fast in all the circumstances;

- (d) Failing to exercise due care and attention to other road users;
- (e) Failing to stop, slow down, swerve or otherwise manoeuvre the vehicle, so as to avoid colliding with the Defendant's vehicle;
- (f) Failing to act as a prudent driver in all the circumstances.

[6] The Defendant pleads that as a result of the Second Claimant's negligence, he suffered pain and injury, loss and damage. He counterclaims against the Claimants:-

- i). Special damages of EC \$68,200.00
- ii). General damages for personal injuries
- iii). Interest
- iv). Costs.

[7] The evidence for the First Claimant was given by Mr. Pedro Corbin, the General Manager of the First Claimant. In his Witness Statement, Mr. Corbin stated that the Second Claimant is his niece; he states that he is aware that the vehicle was involved in a motor vehicular accident with the Defendant on the 1st April 2006 and that the Second Claimant suffered injuries as a result and that the vehicle registration number A17034 was extensively damaged. The estimated cost of repairing the vehicle exceeded its pre-accident value and therefore could not be repaired economically. It was sold for \$2,500.00.

[8] Under cross-examination, Mr. Corbin testified that he is the General Manager of the First Defendant. He testified that the Second Defendant Ms. Layne was driving vehicle No. A17034 with his permission. She was driving a family friend home, but she was not on company business.

[9] The Second Claimant's evidence with respect to how the accident occurred as contained in her Witness Statement is that at about 7 p.m. on the date of the accident, she was driving motor vehicle No. A17034. Her twelve (12) year old cousin Sasha Corbin was seated in the front passenger seat. She was driving in a westerly direction along Cedar Grove main road towards the junction with Longfords Road. Longfords Road is also

known as Friar's Hill Road. She saw two cars waiting at the junction of Friar's Hill Road. They were at a standstill and she maintained her course since she had the right of way. She cannot remember exactly how fast she was driving, but she knew that "it was not very fast". As she approached the junction with Friar's Hill road, a third motor vehicle, a jeep, suddenly appeared from the far left lane of the junction and turned right in front of the 2 cars which had been waiting to turn, and into the path of her vehicle. She swerved right to attempt to avoid a collision but the vehicles still collided. As a result of the collision, her vehicle spun and came to a stop on the right side of Cedar Grove main road.

[10] Under cross-examination, Ms. Layne testified that the collision occurred at the junction. She denied that she was driving fast. When it was put to her that she was driving in excess of 60 miles per hour, Ms. Layne stated that she did not agree that this was so.

[11] The evidence of the Defendant Mr. Steve Browne is that he was driving in a northerly direction on the Friar's Hill road heading towards the Cedar Grove main road. He stated that he was driving at his regular slow speed and that a few vehicles had overtaken him earlier on that road. When he approached the intersection of Friar's Hill road and Cedar Grove main road, he put on his indicator to signal that he would be making a right turn onto the Cedar Grove main road and he veered towards and stayed closer to the center of the road to make the right turn. When he actually got to the junction, he came to a complete stop and looked both west and east along the Cedar Grove main road to see if there were any oncoming vehicles. As there was no vehicle coming and the road was clear, he proceeded to make a right turn to enter the Cedar Grove Main road. He had successfully completed the right turn and was on his side of the Cedar Grove main road travelling east when he saw the lights of a vehicle and "felt an impact almost simultaneously as he saw the lights".

[12] Mr. Browne stated that before he made the turn, there were no other vehicles or vehicle lights or any other indication that any other vehicle was approaching in either direction. He states that the Second Claimant "just suddenly appeared" after he had completed his

turn and that he only recognized her presence when he saw the lights after he was already on his side of the Cedar Grove main road. He states that the collision was so quick that he was not able to take any form of evasive measure as she came down the Cedar Grove main road. The impact from the Second Claimant colliding with his vehicle sent his vehicle spinning around and down the Cedar Grove road. His vehicle ended up facing the direction from which he was coming and he ended near the culvert to the west of the Longford's road.

[13] Under cross-examination, Mr. Browne testified that the accident did not occur at the junction but sometime after he had left the junction. He stated that he saw the lights of the vehicle driven by Ms. Layne almost at the same time that he felt the impact. He did not see Ms. Layne approaching along the Cedar Grove Main Road.

[14] Mr. Loic Regelan gave evidence on behalf of the Defendant. He testified that around 7.45 p.m. on the day of the accident, he was driving his vehicle, a grey Nissan pickup, along the Friar's Hill road. While on the Friar's Hill road, he got behind a grey Daihatsu jeep. The jeep was being driven slowly and he stayed behind it until it got to the junction of the Friar's Hill road and the Cedar Grove road. The jeep stopped at the intersection and was there for a few seconds before it moved off. He was still immediately behind the jeep at the junction. The jeep made a right turn onto the Cedar Grove Main road and was proceeding eastwards. Mr. Regelan stated that the next thing he recalled was hearing a sound like an impact and seeing both vehicles, the grey jeep and a motorcar, coming, spinning westwards. At this time he was at the junction of Friar's Hill road and Cedar Grove Main road, about to turn onto the Cedar Grove road. The jeep ended up by a nearby culvert on the road and that both vehicles were badly damaged.

[15] Under cross-examination, Mr. Regelan testified that when he got to the junction, the Defendant was going right and he was going left. He stated that prior to hearing the crash, he did not see anything coming from the right. He said that he looked when he heard the crash; that the Defendant was already on the road going up to Cedar Grove Road.

SUBMISSIONS OF COUNSEL

[16] Learned Counsel for the Claimants Mrs. Fidelia Corbin submits that the accident which occurred on the 1st April 2006 was caused as a result of the negligence of the Defendant. It is the submission of Ms. Corbin that:-

(a) The Defendant was in breach of his duty to exercise reasonable care by leaving the junction of Friar's Hill Road and Cedar Grove Main Road and making a right turn onto Cedar Grove Main road when it was unsafe to do so in all the circumstances. In particular, the Defendant was negligent in, among other things, positioning himself in the far left lane while at the intersection (which lane is for vehicles intending to turn left onto the Cedar Grove Main Road) when his intention was to make a right turn.

(b) Alternatively, that the said accident was contributed to by the Defendant.

[17] It is the contention of Learned Counsel for the Claimants that the measurements contained in the second police report dated 18th October 2010 are "unclear and incomplete." She further contends that the measurements "require evidence from the maker of the document and/or other extrinsic evidence to clarify the said measurements." She points to several "defects" in the said report. She submits that the measurements contained in the police report are unreliable and ought not to be taken into consideration.

[18] Learned Counsel for the Defendant Mr. John Fuller submits that the Second Claimant was negligent in her driving of the vehicle and that it was her negligence which caused the collision. It is Counsel's submission that the Defendant had completed his right turn and was on his side of the Cedar Grove Main Road travelling east when he felt the impact caused by the vehicle being driven by the Second Claimant colliding with his vehicle. With respect to the police report, Learned Counsel submits that the officer's measurements were made in the presence of both the Second Claimant and the Defendant and all points mentioned in the said police report were shown by the parties.

THE LAW

[19] Negligence is “the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do.” It is settled law that, with respect to negligence arising from motor vehicular accidents, motorists owe a duty of care to other road users to take reasonable care in their use of the road so as not to cause harm to other road users. Breach of that duty of care will render the motorist liable in negligence. Reasonable care means the care which an ordinarily skillful driver or rider would have exercised, under all the circumstances, and connotes an “avoidance of speed, keeping a good look-out, observing traffic rules and signals and so on.” - per Lord McMillan in **Bourhill v Young**¹

FINDINGS

[20] Having assessed the evidence in its totality and having considered the submissions of Counsel, I make the following findings of fact.

[21] I am familiar with the location where the accident occurred. The Friar's Hill Road at the junction /intersection with the Cedar Grove Main Road has three (3) lanes. The left lane is for traffic turning left onto the Cedar Grove Main Road; the middle lane is for traffic turning right onto the Cedar Grove Main Road; the third lane or the right lane is for traffic travelling along Cedar Grove Main Road in a westerly direction and turning left into Friar's Hill Main Road; that lane is also for traffic travelling along Cedar Grove Main Road in an easterly direction and turning right into Friar's Hill Main Road. A motorist travelling along Cedar Grove Main Road in a westerly direction will note that, prior to its junction with Friar's Hill Main Road, there are signs along that road (Cedar Grove Main Road), indicating that the speed limit is 20 miles per hour. There is a school in the vicinity.

¹ [1943] AC 92 at 104

[22] I am of the view that the Defendant was in the left lane while he was at the junction. This is borne out by the evidence of the Defendant's witness Mr. Regelan. Mr. Regelan states that he was in the left lane waiting to turn to the west and that he was immediately behind the jeep (driven by the Defendant) at the junction. Under re-examination, he testified that there was no car between himself and the Defendant; he stated "I was exactly behind him. I think he was between the right and the left lane – he was a little to the left lane." I am of the view that the Defendant was in the left lane, and not just "between the right and the left lane." The Defendant was therefore negligent in positioning himself in the left lane when he intended to turn right unto Cedar Grove Main Road. The left lane is for drivers intending to turn left.

[23] I do not accept the evidence of the Defendant that the road was clear when he made the right turn to enter the Cedar Grove Main Road. If, as the Defendant alleges, he saw no oncoming vehicle when he made the turn, it is because he was not keeping a proper look out for the approach of other vehicles. There is no explanation for his failure to see the vehicle that hit him before it actually did so, other than his own negligence in not making sure that it was safe to turn before he did so. I also do not accept the evidence of the Defendant that he had completed the right turn and was proceeding eastwards when the collision occurred.

[24] The Defendant further states that the Second Claimant collided with him "head on." I do not accept that evidence. I agree with the submission of Counsel for the Claimants that that evidence is highly improbable in light of the damage to the motor vehicles. From the photographs tendered in evidence, it is clear that the damage to motor vehicle A 17034, driven by the Second Claimant, was to the left side front of the motor vehicle. This is not consistent with the Defendant's evidence that the Second Claimant collided with him "head on." Further, according to the photographs, the greatest damage to the Defendant's vehicle is to the right front of the said vehicle. The photographic evidence is more consistent with the submission of Counsel for the Claimants that the Defendant collided with her motor vehicle after he had left the junction, was attempting to turn right and the Second Claimant swerved right to avoid the collision, thus resulting in the

Defendant's right front colliding with the left side front of the motor vehicle driven by the Second Claimant.

[25] With respect to the Police Report, I find that the said Report lacked some details. Further, the Police Officer did not attend Court to be cross-examined. In any event, the evidence as adduced by the witnesses as well as the photographic evidence were sufficient to enable the Court to determine the issue of liability.

[26] It is my considered view that on the evening in question, the Defendant was in the left lane prior to the accident. While in the left lane, he turned right onto the Cedar Grove Main Road; he did so without ensuring that it was safe to do so. The onus was on him to ensure that he was able to commence and complete his turn safely. He failed to do so. As stated above, I do not believe the Defendant's evidence that he had completed his turn and had straightened up and was on his proper side of the road when the accident occurred. To have been driving in the manner that he did was clear evidence of a breach of duty on the part of the Defendant in relation to other road users.

[27] I find that the Defendant's negligence in positioning himself in the wrong lane when he approached the intersection, and turning right into the Cedar Grove Main Road when it was unsafe to do so, was the cause of the accident.

Issue # 2 - Did the Second Claimant contribute to the accident?

[28] As stated above, the accident was caused as a result of the negligence of the Defendant. The question for the Court is: did the Second Claimant contribute to the accident?

[29] It is the law that, generally, a person is guilty of contributory negligence where that person fails to take reasonable care of himself/herself in circumstances where that person ought reasonably to have foreseen that if he/she did not act as a reasonable prudent person, he/she might be hurt; and in such reckonings he/she must take into

account the possibility of others being careless. The primary focus in assessing whether the Second Claimant is guilty of contributory negligence is on the foreseeability of harm to herself (the Second Claimant) apart from her duty to other road users. The question therefore for the Court is whether, on the evidence, it can be established on a balance of probabilities that (a) the Second Claimant did foresee harm to herself; (b) she acted as a reasonable prudent person for her own safety and guarded herself against the negligence of the Defendant.

[30] The Cedar Grove Main Road along which the Second Claimant was driving is a straight road. It is a long road. There is no incline. The Second Claimant's evidence is that while driving along the Cedar Grove Main Road towards the junction with Longford's Road (Friar's Hill Road), she saw cars waiting at the junction; they were at a standstill at the junction. This would have to mean that she had a clear view of the road ahead of her, and of the junction of Friar's Hill Road with the main Cedar Grove Main Road on which she was travelling. The Second Claimant does not state how far away from the junction she was when she first noticed the cars waiting at the junction. She stated, however, that when she saw cars at the standstill, she maintained her course since she had the right of way. She states that as she approached the junction, a jeep suddenly appeared from the far left lane of the junction and turned right in front of the 2 cars which had been waiting to turn. I am of the view that, based on that evidence, the Second Claimant was aware of the presence of the vehicles prior to arriving at the junction. Further, that the Second Claimant maintained not only her course, but maintained her speed prior to approaching the junction.

[31] Counsel for the Claimant has submitted that the Defendant is not in a position to substantiate that the Second Claimant was driving at approximately 80 miles per hour as alleged in his pleadings. I agree. The Court notes however, that the Second Claimant does not deny that she was driving fast. In her Witness Statement, she states that she was not driving **very fast**. (my emphasis). She states that she actually saw the Defendant turning right and into the path of her vehicle. The question then is: - why was she unable to avoid the collision with the Defendant's vehicle? I am unable to resist the

conclusion that the Second Claimant was unable to avoid the collision because she was travelling too fast.

[32] The Second Claimant's evidence discloses that she had recently arrived in Antigua from Barbados. There is nothing to indicate that she was familiar with the particular road on which she was driving. It was 7.30 in the evening when the accident occurred. A reasonable and prudent driver would be driving at a safe speed, having regard to the fact that 7.30 in the evening in the month of April in the Caribbean is already dark, having regard to the fact that this was an unfamiliar road, and also having regard to the fact that she was approaching a junction where vehicles were present. I am satisfied that the Second Claimant was travelling at a speed far in excess of the speed limit of 20 miles per hour. The impact caused her vehicle to spin and come to a stop on the right side of the Cedar Grove Main Road, that is, on the opposite direction in which she was driving. Further, there was major damage to both vehicles; the vehicle which she was driving had to be written off. The Second Claimant was under a duty to drive with due care and attention and to drive within the speed limit; she had a duty to drive at a speed which would have allowed her to stop in time when confronted with the "dilemma" caused by the Defendant. She ought to have foreseen the possibility of drivers like the Defendant not stopping at an intersection and therefore she had to take particular care when driving along that road. She failed to take reasonable care for her own safety taking into account, that other road users, like the Defendant, are likely to be negligent. I have found that the Second Claimant was travelling at a speed in excess of the speed limit, and that she was driving at an unsafe speed. To borrow the words of Edwards J A in **Melvina Frett-Henry and Tortola Concrete Limited, Clayton Smithen**-Civil Appeal 2008/024; - "It is her (the Second Claimant's) unsafe speed, coupled with her inability to stop safely when faced with the dilemma (caused by the Defendant's action), and guard herself from injury, that amounts to contributory negligence."

[33] The First Claimant has pleaded that the Second Claimant was driving vehicle No. A 17034 as its servant or agent. The First Claimant is therefore vicariously liable for the negligence of the First Claimant.

APPORTIONMENT OF DAMAGES

[34] Where a defendant is found to be negligent and the claimant is guilty of contributory negligence, the Court may apportion the damage. The damages recoverable shall be reduced to such extent as the Court thinks just and equitable having regard to the share of the Claimant in the responsibility for the damage.

[35] According to Lord Reid in **Stapley v Gypsum Mines Ltd.**²:-

“...A Court must deal broadly with the problem of apportionment, and, in considering what is just and equitable, must have regard to the blameworthiness of each party. But the Claimant's share in the responsibility of the damage cannot, I think, be assessed without considering the relative importance of his acts in causing the damage, apart from his blameworthiness.”

[36] Having regard to the evidence and applying the principles as stated above, I am of the view that liability should be apportioned 70/30 in favour of the Claimant. This means that the Claimants are entitled to recover 70% of their proven damages, whereas the Defendant shall recover 30% of his proven damages on his Counterclaim against the Claimants.

DAMAGES

[37] The Claimants and the Defendant have claimed Special Damages as well as General Damages. This judgment will focus only the awards of Special Damages. The issue of General Damages is to be scheduled for assessment before the Master.

² [1953] AC 663, p. 682

SPECIAL DAMAGES

A. First Claimant

[38] The Claimants submit that the Defendant is liable to the First Claimant for special damages of EC \$ 83,475.00. The items claimed for are as indicated in the Schedule of Special Damages attached to the Statement of Claim and are as follows:-

i). Pre-Accident value less \$2,500.00 salvage	EC \$ 76,000.00
ii). Policy excess	EC \$ 5,175.00
iii). Cost of Estimate	EC\$ 300.00
iv). Loss of use for 10 days @ \$200.00 per day	EC\$ 2,000.00

The First Claimant has provided documentary evidence to prove items (i) to (iii) above. He has provided no evidence with respect to item (iv). In particular, he has provided no evidence that a replacement vehicle was hired for 10 days as alleged, or at all. I therefore allow the sum of \$81, 475.00 for the above claim.

[39] Consequently, the award of special damages for the 1st Claimant is as follows:-

i). Pre-Accident value less \$2,500.00 salvage	EC \$ 76,000.00
ii). Policy excess	EC \$ 5,175.00
iii). Cost of Estimate	<u>EC\$ 300.00</u>
	\$ 81,475.00
Less 30%	- <u>\$ 24,442.50</u>
	\$ 57,032.50

B. Second Claimant

[40] The Claimants plead that as a result of the collision, the Second Claimant suffered pain, injury, loss and damage. As a result of the accident, the Second Claimant was admitted to the Holberton Hospital in Antigua, where she was diagnosed with a closed fracture of the proximal third of the left femur, a compound (open) chip fracture of the left patella, and shortness of breath. The Second Claimant was transferred by air ambulance to Barbados and underwent surgery there at the Queen Elizabeth Hospital.

[41] The Claimants submit that the Defendant is liable to the Second Claimant for special damages of EC 64,478.52. The items claimed for and as indicated as items 1-9; 12 and 14 on the Schedule of Special Damages are as follows:-

Cost of Air Ambulance with medic crew from Barbados to Antigua to Barbados (US \$ 8,500.00)	EC \$ 22,950.00
Crutches and heel pillow	EC \$ 4,720.18
Physical therapy – 15 sessions @ BDS \$80.00 per session	EC \$ 1,620.00
X-Ray (BDS \$120.00)	EC \$ 162.00
General Anesthesia (BDS \$600.00)	EC \$ 810.00
Adjustable Toilet Seat (BDS \$147.00)	EC \$ 193.05
Room and services rendered by the Queen Elizabeth Hospital (BDS \$ 1,900.00)	EC \$ 2,565.00
Cost of Medical Report of Dr. Winston Seale (BDS \$900.00)	EC \$ 1,215.00
Professional Services rendered by Dr.	EC \$ 3,375.00

Winston Seale (BDS \$ 2,500.00)

Loss of income from April 1,2006 to October
2, 2006 @ EC \$ 2,800.00 per month EC \$16,800.00

Interest on Loan to cover cost of Air
Ambulance EC \$10,068.28

[42] The Second Claimant has provided documentary evidence for the above items by way of receipts or letters, none of which have been opposed. The above claim for Special Damages in the sum of EC \$ 64,478.52 is therefore allowed.

[43] Consequently, the award of special damages for the First Claimant is as follows:-

Total amount claimed EC \$ 64,478.52

Less 30% - \$ 19,343.56

\$ 45,134.96

[44] The Claimants also claim general damages against the Defendant.

The Defendant's Counterclaim

[45] The Defendant counterclaims that as a result of the negligent and reckless driving of the Second Claimant, he has suffered pain and injury, loss and damage. The Particulars of his Injuries are as follows:-

- (a) Broken nose.
- (b) Multiple injuries to ankles, knees, hip, shoulder and face.
- (c) Effusion and pain in right shoulder and soft tissue injury to both shoulders.
- (d) Partial tear of the tendon of the supraspinatus and infraspinatus.

- (e) Internal de-arrangement of his both knees with soft tissue injuries.
- (f) Tear of telo-fibula and calcanial-fibula ligament of right ankle.
- (g) Intra-articular contusion of femoral condyle left, partial tear of medial collateral ligament and anterior crucial ligament along with injury to lateral meniscus.

[46] The Defendant was hospitalized at the Holberton Hospital for a few days for treatment following the accident.

[47] The Defendant counterclaims against the Claimants Special Damages in the sum of \$68,200.00, made up as follows:-

(a) Total destruction of Defendant's vehicle with no salvage value	\$24,000.00
(b) Cost of replacement of spectacles	\$ 2,000.00
(c) Medical expenses	\$11,000.00
(d) Loss of income for 48 days @ 650.00 per day	\$31,200.00

[48] The Defendant has, regrettably, produced no evidence of his loss of income. The law is settled that special damages must be specifically pleaded and specifically proved. In the absence of any documentary or other cogent evidence of such income, his claim for loss of income is disallowed. The award of special damages for the Defendant is therefore in respect of the following:-

(a) Total destruction of Defendant's vehicle with no salvage value	\$ 24,000.00
(b) Cost of replacement of spectacles	\$ 2,000.00
(c) Medical expenses	<u>\$ 11,000.00</u>
 Amount allowed	 \$37,000.00
 Less 70%	 <u>- \$25,900.00</u>
	 \$11,100.00

[49] The Defendant also claims general damages.

CONCLUSION

[50] The awards for the Claimants are summarized as follows:-

Special damages	\$ 145,953.52
Less 30%	<u>- \$ 43,786.06</u>
	\$ 102,167.46

Interest on Special Damages is 2½ % from (the date of the accident) 1st April, 2006 to 5th day of March 2012 (the date of trial).

- (a) General Damages to be assessed.
- (b) Costs in accordance with CPR.

[51] The awards for the Defendant are summarized as follows:-

(a) Special damages	\$ 37,000.00
Less 70%	<u>- \$ 25,900.00</u>
	\$ 11,100.00

- (b) Interest on Special Damages is 2½ % from 30th April 2009 to the 5th March 2012 (the date of trial).
- (c) General Damages to be assessed.
- (d) Costs in accordance with CPR.

ORDER

- i). Judgment for the Claimants for Special damages in the sum of \$102,167.46.
- ii). Interest on the sum of \$102,167.46 at the rate of 2½ % from 1st April, 2006 to the 5th March 2012.
- iii). Costs to the Claimants in accordance with CPR.
- iv). Judgment for the Defendant for Special Damages on his Counterclaim against the Claimants in the sum of \$11,100.00.
- v). Interest on the sum of \$11,100.00 at the rate of 2½ % from 30th April 2009 to the 5th March 2012.
- vi). Costs to the Defendant in accordance with CPR.
- vii). General damages to be assessed.


JENNIFER A. REMY
High Court Judge