

EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV2009/0208

BETWEEN:



DAWN YEARWOOD-STEWART

Claimant

And

[1] ADDISON ABEL

[2] MARTHA ABEL

Defendants

Appearances:

Mr. Lennox Lawrence for the Claimant

Mrs. Zena Dyer and Mrs. Gina Dyer-Munro for the Defendants

.....  
2014: January 20<sup>th</sup>, 22<sup>nd</sup>

October 3<sup>rd</sup>

Re-issue: October 9<sup>th</sup>  
.....

### JUDGMENT

- [1] **THOMAS, J: [AG]** Before the court is a claim by Dawn Yearwood-Stewart for damages for personal injury, interest at the statutory rate, such further or other relief as may be just; and costs. The claim is against Addison H. Abel and Martha Abel, and arose out of a vehicular accident on 3<sup>rd</sup> March 2009 on the Canefield Highway.

- [2] The claimant's case is on the day in question the 1<sup>st</sup> defendant was proceeding east along the said road and drove his vehicle so negligently that it collided with the claimant's vehicle. The claimant further avers that as a result of the collision her head collided with the driver side glass and the front passenger side glass causing multiple head injuries and as a result had to be taken to the Princess Margaret Hospital for treatment over a period of two days.
- [3] The particulars of injury, neglect and special damages in Dominica and Barbados are pleaded as well as particulars of loss and damages to motor vehicle.
- [4] The particulars of injury pleaded are: full thickness curvilinear laceration involving the peristeum extending from the left upper lid through the brow and the forehead curving temporally, 7cm in length, underlying frontal bone was exposed, hematoma to right side of forehead; damage to the left supra orbital nerve, loss of sensation above wound extending to the frontal area of the scalp and no controlling movement of the frontalis muscle.

#### Amended Defense

- [5] The 1<sup>st</sup> and 2<sup>nd</sup> defendant admits paragraphs 1 and 2 of the claimant's statement of claim but the 2<sup>nd</sup> defendant avers that she was not present at the time of the accident and does not know how the accident was caused.
- [6] The 1<sup>st</sup> defendant's case is that the vehicle driven by the claimant and himself were travelling in opposite directions on the Canefield Highway at the time of the accident. The 1<sup>st</sup> defendant's further averment is that the collision was not head on as claimed by the claimant but was caused when the claimant's vehicle collided with his vehicle on the right side of the 1<sup>st</sup> defendant's vehicle causing damage to that side of the defendant's vehicle.
- [7] The 1<sup>st</sup> defendant further contends that: the claimant was driving at excessive speed when the claimant vehicle struck the 1<sup>st</sup> defendant's vehicle the 1<sup>st</sup> defendant's right front wheel with the part attaching the said wheel to the vehicle completely broke off; the striking caused said wheel and the said part to be sent some distance away from the 1<sup>st</sup> defendant's vehicle in the direction

of Roseau, being the opposite direction in which the 1<sup>st</sup> defendant was travelling; the impact of the claimant's vehicle pushed the 1<sup>st</sup> defendant's vehicle out of its position and across the road; the claimant's vehicle did not and could not stop, but continued in the direction of Roseau and stopped some distance away from the point of impact.

- [8] Regarding the injuries pleaded the 1<sup>st</sup> defendant contends that if at all the claimant suffered loss, injuries or damage such were solely due to the claimant's negligence, and as such the particulars of negligence are denied as well as loss and damage to the claimant's vehicle.
- [9] The defendants deny liability for the particulars of special damage in Dominica and Barbados as pleaded, general damages and the particulars of loss and damage to the claimant's vehicle.
- [10] Finally, it is pleaded that further or alternatively the said collision was caused either wholly or in part by the negligence of the claimant.

#### Counter claim

- [11] In this regard the following is pleaded: "by reason of the said collision, the 1<sup>st</sup> and 2<sup>nd</sup> defendants have suffered loss and damage and the 1<sup>st</sup> defendant who is 54 years old sustained severe personal injuries."
- [12] Particulars of special damages and injuries to the 1<sup>st</sup> defendant are pleaded as well as particulars to the 1<sup>st</sup> defendant.

#### Reply

- [13] The claimant in her reply joins issue with the defendants on their defense and contends that the claimant caused or contributed to the accident which caused her to suffer the injuries mentioned in the claim. And at paragraph 3 the following the pleaded:

"With regard to paragraph 16 of the amended defense the claimant, upon being discharged from the Princess Margaret Hospital was given a medical referral by Dr. Shillingford Ricketts to seek further medical attention in Barbados by a Neurologist, Dr.

John Grell who also referred the claimant to Dr. Judy Ward for reconstructive surgery. Therefore the claimant upon being discharged left Dominica for Barbados pursuant to the said medical referral."

Amended defence to counter claim

- [14] The following is pleaded at paragraph 3 thereof: "No part of the first defendant's medical report is agreed as the contents are mostly hearsay and there is no evidence that the injuries seen by the doctor on the first defendant's body was as a result of the accident which occurred on the 3<sup>rd</sup> March 2009 between the claimant and the first defendant."

Evidence

Dawn Yearwood-Stewart

- [15] Dawn Yearwood-Stewart in her witness statement gives an account of an accident on 3<sup>rd</sup> March, 2009 in which she was involved on the Canefield Highway. According to this witness, when she reached in the vicinity of the Texaco Gasoline Station she realized that the two head lamps she had seen earlier was a car which suddenly crossed into her lane and slammed into her vehicle. It is her further evidence that the vehicle was pushed completely off the road and came to a standstill in some bushes and into a drain on the southern side of the road.
- [16] In the remainder of her witness statement Dawn Yearwood Stewart details the position of the vehicles after the accident; the injuries sustained; of being taken to the Princess Margaret Hospital for treatment, including surgery by Dr. Hazel Shillingford-Ricketts; further medical treatment in Barbados, the loss of her spectacles and her inability to purchase new spectacles locally on account of the nature of the prescription; further consultations in Barbados with Dr. Grell and Dr. Ward; the rental of a vehicle on account of the total loss of her vehicle; the contention that the defendants are responsible for all of her expenses flowing from naturally the accident which was caused by the 1<sup>st</sup> defendant due to his drunken state on that night; while at the hospital what she recalls hearing the 1<sup>st</sup> defendant saying about his inability to remember what had happened; and her loss of earnings for the period 4<sup>th</sup> March 2009 to 10<sup>th</sup> April, 2009.

[17] The witness was permitted to amplify certain paragraphs of her witness statement and in the process gave further details of the accident. In the end the witness' contention is that the 1<sup>st</sup> defendant's vehicle hit her vehicle on the right side. The witness also denied that she was driving at excessive speed to get to Castle Comfort.

[18] Under cross-examination Dawn Yearwood Stewart maintained that she was not driving fast and went on to say that the 1<sup>st</sup> defendant's right side tyre hit her when she was on her correct side and that after the accident the front of her vehicle was facing north and the back facing south and were not ten feet apart. In further cross-examination concerning the control of the vehicle and speed, the witness testified that she lost control of her vehicle after it was hit and at the time of the accident she was driving at 60 Rph.

[19] In re-examination Dawn Yearwood Stewart gave evidence that the front wheels of her vehicle were in the drain facing north. The witness went on to testify that the front of the 1<sup>st</sup> defendant's vehicle was on her side and the back was on his side. The driving speed of 60 Rph was also maintained by the claimant.

Dr. Hazel Shillingford Ricketts

[20] In her witness statement Dr. Hazel Shillingford Ricketts gave evidence that she attend to the claimant in the night of 3<sup>rd</sup> March 2009. According to the witness, the following procedures were carried out: CT scan of the claimant's head and orbits; x-rays of the claimant's left spine, cervical spine and surgical procedures were also performed and notes made.

[21] According to the witness, an appointment was made for the claimant to see Dr. John Gill, a neurosurgeon with his practice in Barbados.

[22] In an amplification of paragraph 5 of her witness statement, the witness explained that the notes were made at the time she attended the patient.

[23] There was no cross-examination of in her witness statement Dr. Hazel Shillingford Ricketts.

Reginald Burke

- [24] According to the evidence of Reginald Burke he is an Auto Insurance Assessor with training in the field. The witness went on to identify the various companies for whom he worked. In amplification of paragraphs 2 to 5 of his witness statement the witness explained that he prepared a report after an inspection of the vehicle owned by Dawn Yearwood-Stewart.
- [25] In cross-examination Reginald Burke explained certain aspect of the damage to the said vehicle and the consequence of a collision in respect of parts of a vehicle.

Addison Abel

- [26] Addison Abel in his evidence in chief details the night of 10<sup>th</sup> March 2009 as follows: he was on his way home from the Roseau Police Station at about 8:30 pm driving at about 30 miles per hour; on reaching between the NP and Texaco gas station, he saw the claimant's vehicle coming in the opposite direction; took the corner by Auto Trade at great speed and 5-7 seconds later he saw the said vehicle sway onto the right side of his vehicle; the claimant's vehicle continued "in an uncontrollable speed for about 50 feet away from where the claimants vehicle collided with my vehicle; "the claimant's vehicle stopped when it went into a deep drain with a high bank on the left side of the road; the impact of the vehicles caused him to hit his head on his windscreen; and his vehicle was completely damaged."
- [27] In respect of his driving on the said night the 1<sup>st</sup> defendant says that he was not negligent, and did not cross over into the claimant's lane. Rather, he says that it is the claimant who was driving at excessive speed which caused his right front wheel and the parts attaching to the said wheel of the vehicle to be completely broken off. The witness went on to say that after the wheel came off it travelled for some distance towards Roseau being the same direction in which the claimant's vehicle was travelling.
- [28] In commenting on the claimant's evidence, the following pieces of evidence emerged: the 1<sup>st</sup> defendant said that he did not cross into the claimants' lane; it was the claimant who drove at

great speed which was estimated at 60-70 mph; after the impact the back of his vehicle travelled towards Texaco and the face towards Morne Daniel; his vehicle was 15 feet from the point of impact; it is not true that I did not point out the point of impact and it was the claimant did not show a point of impact.

[29] Under cross-examination the 1<sup>st</sup> defendant was questioned about the license and related matters concerning his vehicle and he said that on the 10<sup>th</sup> March 2009 it was neither licensed or insured for two or three years. He went on to say that it was possible that it was last licensed and insured in May 2005. With respect to the events before the impact and at the time of the impact, the 1<sup>st</sup> defendant testified that he lives in Canefield and is familiar with the road and that when he saw the headlights two vehicles were about 50-70 feet apart. And further that the accident took place in the area near to the Texaco Gas Station; and that the distance between the Texaco Gas Station and Auto Trade is 100 feet or less but not 200 feet.

[30] As to the position of his vehicle after the impact this is the 1<sup>st</sup> defendant evidence: "My vehicle was diagonal but not vertical across. My vehicle was across the median line in the road. I agree that up to the front door was across the road. I remained on the scene after the collision for about 10 minutes or so. The claimant's vehicle stopped after it continued. I saw the claimant's vehicle after I got out of my vehicle. It was the first time I saw it after the collision. I stopped at the point of impact when I was struck."

[31] In reply to the proposition put to him by counsel for the claimant that the wheels of the claimant's vehicle were in the drain and the back tyres on the elbow, the 1<sup>st</sup> defendant said that that was not correct. He went on to explain that left tyres were in the drain with the other two tyres on the verge of the road.

[32] When it was put to the 1<sup>st</sup> defendant that he was the one who swayed into the claimant's vehicle, this was his response: "I saw the claimant's vehicle and I kept on my side at all times. Before the vehicles collided I did not apply my brakes and I did not swerve as I did not anticipate the claimant's vehicle coming on to my vehicle."

[33] In the closing stages of the cross-examination, several propositions suggested to the 1<sup>st</sup> defendant that he caused or is responsible for the accident and consequential loss were all denied by the 1<sup>st</sup> defendant.

Adler Hamlet

[34] Adler Hamlet in his witness statement gives his qualification and professional experience to include: Bachelor of Science, Second class honours, from the University of the West Indies; Certified Diploma in accounting and finance from the Association of Certified Chartered Accountants a certificate from the University of the West Indies in Energy Management and Masters Degree in Business Administration from the University of Warwick. He also qualified as a Chartered Mechanical Engineer and is also a qualified member of the Institution of Electrical and Electronic Engineers.

[35] In terms of professional experience the witness worked as a mechanical engineer with the Government of Dominica on the job training in the United Kingdom in the electricity utility sector, also training in petroleum, oil and lubricants and in internal combustion engine standby plants.

[36] In commenting on the claimant's evidence in regards the 'head on collision', the witness testified that the collision was a side impact and in such circumstances the stationary vehicle is either spun or turned over. The witness went on to say, that the damage to the claimant's vehicle suggest the front of the vehicle was severely damaged which included the windscreen, left and right head lamps, left and right indicators, radiator, firewall, front bumper and bumper reinforcement.

[37] With respect to the defendants' vehicle the witness said that the zone where the damage is located the following items should be replaced: right door, right fender, right door mirror, right front wheel with apron, front bumper, door hinges, right door glass, right head lamp, wheel rim and bonnet.



- [38] Under cross-examination, the witness Adler Hamlet testified that after the accident he did not inspect the claimant's vehicle and did not try to re-construct the accident. He went on to say that the spin does not necessarily happen, and that the manner in which the vehicles end up in the final stage of rest will help to determine the direction in which the vehicle spun.
- [39] With respect to a side-on collision, the witness said that the original direction of both vehicles will change and that energy will be absorbed by both vehicles. The witness said further that: "the striking vehicle will be travelling at a faster speed and once it hits the other vehicle in the side the striking vehicle will either spin or rool. The final place of rest after the collision will depend on the speed of the vehicles."
- [40] Continuing his evidence under cross- examination his further testimony is that: "The change of travel is a further factor. The area of damage will be another factor and the size of the vehicles. I have not determined the size of the claimant's vehicle and I did nit inspect the damage to the claimant's vehicle, and I have not determined the final resting place of the claimant's vehicle."
- [41] In re-examination Adler Hamlet testified that the final resting place depends on speed, size and damage sustained and the vehicles changing direction.
- [42] Returning to the nature and consequences of the impact, the witness explained the consequences of the defendants' vehicle being the striking vehicle and ended up saying that the damage from the impact suggests that the claimant's vehicle struck the defendants vehicle on its side.
- [43] In a question arising from learned counsel for the claimant concerning damage to the apron, the witness said that his conclusion would not be different if the claimant's wheel apron was damaged also; and that the damage to the claimant's vehicle suggests a side impact.
- [44] Based on a question by the court Adler Hamlet explained the relationship between force, mass and acceleration. In doing this his evidence is that: "If two forces are acting on an object, that object will move in the direction of the greater of the two forces. In this instance the masses are

similar; the two vehicles are similar so that the vehicle with the greater acceleration is going to be the one exerting the greater force on the other vehicle. Any part of the vehicle like the wheel being dislodged will go in the direction of the one with the greater force.”

Marsha Abel

**[45]** In her witness statement Marsha Abel says that she is part co-owner of Nissan Blue Bird car. It is her further evidence that she does not know how the accident was caused.

**[46]** There was no cross-examination of this witness.

Issues

**[47]** The following issues arise for determination

1. Whether the case against the 2<sup>nd</sup> named defendant as pleaded by the claimant exists in law
2. Who is liable in negligence on the claimant's claim and the defendant's counterclaim
3. Who is liable in damages
4. Who is liable in costs

Issue No. 1

Whether the case against the 2<sup>nd</sup> named defendant as pleaded by the claimant exists in law

**[48]** The pleaded case against the 1<sup>st</sup> and 2<sup>nd</sup> defendants is that: the defendants are husband and wife and at all material times were owners of a vehicle, to wit a car registration PD346.”

Submissions

**[49]** There are no submissions tendered on behalf of the claimant regarding this issue, but the following constitute the submissions on behalf of the defendants:

“There is no allegation that the 1<sup>st</sup> defendant, Addison Abel, was the servant or agent of the 2<sup>nd</sup> defendant, Martha Abel. Further, there is no allegation that the collision was

caused by the negligence of 1<sup>st</sup> defendant, Addison Abel, as servant or agent of the 2<sup>nd</sup> defendant Martha Abel.

The case against the 2<sup>nd</sup> defendant, without more should, it is respectfully submitted ought to be dismissed with costs since as pleaded "a co-owner alone attached no liability"

Further, even if the 2<sup>nd</sup> defendant was the sole owner and if the claimant had pleaded that the 1<sup>st</sup> defendant was servant or agent of the 2<sup>nd</sup> defendant that alone would not make out a case against the defendant."

[50] Learned counsel refers to the case of **Morgans v Launchbury**<sup>1</sup> et al in order to ground her contention and concludes her submissions thus: "In the circumstances before us, there is no pleading of vicarious liability or such allegation or evidence to support it. Therefore the claimant's case against the 2<sup>nd</sup> defendant should be dismissed with prescribed costs payable by claimant."

[51] On the basis of the foregoing, the court agrees that there are no pleadings of vicarious liability or any kindred doctrine and evidence in support.

[52] The holding in **Morgan v Launchbury** et al reads in part as follows: "In order to fix liability on the owner of a car for the negligence of its driver, it was necessary to show either that the driver was the owner's servant or that, at the material time, the driver was acting on the owner's behalf as his agent. To establish the existence of the agency relationship it was necessary to show that the driver was using the car at the owner's request, express or implied, or on his instructions, and was doing so in the performance of the task or duty thereby delegated to him by the owner. The fact that the driver was using the car with the owner's permission and that the purpose for which the car was being used was one in which the owner had an interest or concern was not significant to establish vicarious liability."

[53] In the mind of the court the rule in **Morgans v Launchbury** et al encompasses entirely the circumstances of the second named defendant. More than that, in their amended defence, it is

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<sup>1</sup> [1973] A.C 127

pleaded that she was not present at the time of the accident and does not know how it was caused. Accordingly the case against the 2<sup>nd</sup> named defendant is dismissed with costs.

Issue No.2

Who is liable in negligence on the claimant's claim and the defendant's counterclaim?

- [54] As dictated by law the consideration of the issue must begin with a consideration of the claimant's case. As noted above, the claimant's case is that on 3<sup>rd</sup> March 2009, the 1<sup>st</sup> defendant was proceeding east along the road and drove his vehicle so negligently that it collided with the claimant's vehicle. It is further contended that as a result of the collision the claimant's head collided with the driver side glass and the front passenger side glass causing multiple head injuries and as a result had to be treated at hospital.
- [55] The particulars of the alleged negligence against the 1<sup>st</sup> defendant are as follows:
1. failed to heed the presence of the claimant on the road.
  2. driving at excessive speed in all the circumstances failed to brake, steer or swerve or maneuver his car to avoid the collision.
  3. failed to control his vehicle so that it did not cross the claimant's path on the highway.
  4. Failed to drive on his left and proper side of the road
  5. Driving without licence and insurance.
- [56] In terms of the evidence the following are important aspects of the claimant's evidence: on the 3<sup>rd</sup> March 2009 the claimant was driving on the Canefield Highway a car suddenly crossed her lane and slammed into her vehicle; the claimant's vehicle was pushed completely off the road and came to a standstill in some bushes and in a drain on the southern side of the road; the defendant's right side vehicle tyre hit the claimant's vehicle on the right side; the claimant maintained that she was not driving at excessive speed, being 60kph and only lost control of the vehicle after her vehicle was hit.

- [57] As far as the 1<sup>st</sup> defendant is concerned, the critical evidence is as follows: a vehicle took the corner at Auto Trade at great speed and 5-7 seconds later the said vehicle swayed into the right side of his vehicle; the vehicle continued at an uncontrollable speed for about 50 feet from where the vehicles collided; the claimant's vehicle stopped when it went into a deep drain with a high bank on the left side of the road; as a result of the collision the right front wheel and the parts attaching to the said wheel of the defendant's vehicle were completely broken off; the wheel that was broken off and travelled for some distance towards Roseau, being the same direction in which the claimant's vehicle was travelling.

#### Submissions

- [58] The claimant's case is that the defendant caused the collision which was head-on and which resulted in personal injuries and damage to her vehicle. The following represents an excerpt from the submissions: beginning with a comment on the 2<sup>nd</sup> defendant's evidence:

"We submit that his testimony is suggestive that his vehicle never moved which does not support the theory advanced by the expert witness that the claimant's vehicle or his vehicle would have changed course and direction. We submit that the stage and direction at which the Defendant says his vehicle stopped is consistent with the Claimant's testimony that the Defendant's vehicle swerved into her moving vehicle and collided with it causing her to lose control of the same. We further submit that the damage to the Defendant's right wheel and components are consistent with swerving into a moving vehicle while it is on the proper course as the Claimant alleges in her testimony.

24. On the basis of the foregoing and the fact that the Defendant's expert witness did not have all the salient facts from his opinion that the Claimant's vehicle was the striking vehicle, this Honourable Court is asked to reject the evidence of the expert who was clearly called by the Defendant to bolster his case that the Claimant caused the accident on the night."

#### Submissions on behalf of the defendant

[59] The basic submission on behalf of the defendants is that the claimant's case cannot succeed as she has at trial put forward a different case<sup>2</sup>. The following are extracts from the submissions on behalf of the claimant:

"The evidence of the claimant herself does not support the fact that the 1<sup>st</sup> defendant collided with her or that the "front of the Defendants" vehicle hit the right front of the Claimant's vehicle and pushed her off the road. The evidence clearly show that it is the claimant who struck the 1<sup>st</sup> defendant when she was at excessive speed, lost control and could not stop.

All in all, the evidence discloses that the accident was caused by the negligence of the Claimant as alleged by the Defendant and that the Claimant struck his right front quarter. In respect of the velocity, the force and speed the vehicle were going at, although there are no measurements, Mr. Hamlet supports the 1<sup>st</sup> Defendants that the Claimant was travelling at high speed. It is further respectfully submitted that the case of the Defendants as to what happened is the more probable one, as the Defendant has relied upon the expert evidence of Mr. Adler Hamet. There is no independent eye witness as to say what happened and how the accident occurred.

It is submitted that the evidence of the expert, Mr. Adler Hamlet shows that the 1<sup>st</sup> Defendant's explanation as to how the accident occurred is the probable one."

#### Reasoning and Conclusion

[60] From the evidence highlighted the issue falls to be determined on the following pieces of evidence: the 1<sup>st</sup> defendant evidence that the approaching vehicle was travelling at great speed and took 5-7 seconds from the Auto Trade corner to the Texaco Gas Station on the Canefield Highway; the said vehicle, being the claimant's vehicle swayed into the right side of the 1<sup>st</sup> defendant's vehicle and continued at an uncontrollable speed from the area of the collision; the right front wheel and apron were detached from the 1<sup>st</sup> defendant's vehicle; the detached wheel travelled towards Roseau in the same direction as the claimant's vehicle.

[61] To the foregoing must be added the following pieces of evidence of Adler Hamlet which the court accepts:

"Adler Hamlet: the collision was a side impact but damage to the claimant's vehicle was severely damaged; with respect to a side on collision both vehicles the original position of both vehicles the original position of both vehicles will change and the energy absorbed by both vehicles, the striking vehicle will be travelling at a faster speed and once it hits the other vehicle on the side the striking vehicle will either spin or rool; the final resting

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<sup>2</sup> In this regard the case of: Melvina Frett-Henry v Tortola Concrete Limited and Clayton Smithen, HCVAP2008/24 is cited

place of the vehicle's depend on speed, size and damage sustained and the vehicles changing direction; if two forces are acting on an object that the object will move in the direction of the greater of the two forces.

#### Conclusion

- [62] In all the circumstances of the case, the court cannot accept the submissions on behalf of the claimant as the expert has given evidence that is credible and logical in the view of the court based on the courts finding that : the claimant's vehicle was travelling at a greater speed than that driven by the 1<sup>st</sup> defendant, the claimant's vehicle was the striking vehicle which dislodged the right front wheel and apron of the 1<sup>st</sup> defendant's vehicle; and, importantly, the dislodged wheel moved or travelled in the same direction as the claimants vehicle, being towards Roseau.
- [63] On this account the claimant's claim in negligence fails and the defendant's counter claim succeeds because: the defendants owed a duty of care to the claimant but it has not been shown that the defendants were in breach of that duty of care with resulting damage: while on the other hand, the claimant owed a duty of care to the defendants and acted in breach of that duty of care with damage resulting.<sup>3</sup>

#### Issue No. 3

Who is liable in damages?

- [64] By virtue of the determination reached by the court regarding liability for negligence, it follows that damages fall at the feet of the claimant.
- [65] The defendants are seeking special damages for personal injuries.
- [66] The following are the particulars of special damages claimed by the 1<sup>st</sup> defendant:
1. Loss of motor vehicle EC\$19,000.00
  2. Vehicle accident survey report EC \$275.00
  3. Nominal damages of \$1,000.00 for loss of use of his vehicle

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<sup>3</sup> See: Clerk & Lindsell on Torts 19<sup>th</sup> ed. at para 804

4. Home help for the 1<sup>st</sup> defendant for 21 days \$750.00

Loss of motor vehicle

[67] In a motor Vehicle Accident Survey Report<sup>4</sup> on the defendant's vehicle, the cost of replacement parts is given as \$14,978.34 while the estimated total cost of repairs is given as \$19,640.09. However in a recommendation it is stated that the vehicle is considered as a constructive total loss and in view of the estimated total loss of repairs and the estimated pre-accident value, the recommendation is made that the claim be settled on the total loss basis with the owner being compensated at the estimated pre-accident value. That value is \$10,000.00. Indeed this figure coincides with the quantum in the submission on behalf of the defendants. The award is therefore \$10,000.00.

Vehicle accident survey report.

[68] There is no receipt evidencing the payment of \$275.00 and as such the amount is disallowed.

Loss of the vehicle from the date of the accident to judgment at \$150.00 per day

[69] It is unusual for damages for loss of use to be awarded in these circumstances<sup>5</sup> and in any event the amount claimed is quite exorbitant and unreasonable. However in all the circumstances the court awards \$1000.00 as nominal damages for loss of use in order that the 1<sup>st</sup> defendant may address his situation.

Home help for 21 days

[70] Again, while the help is normal in this context, the point remains is that it is special damages which must be specifically pleaded and proven. This is not the case here.

Personal injuries

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<sup>4</sup> At page 79 of Trial Bundle #3

<sup>5</sup> See: McGregor on Damages (17<sup>th</sup> ed.) at para 33-032



- [71] A report by Dr. B. B Fadipe was given after he was consulted on 5<sup>th</sup> March 2009 for pain and swelling following an RTA two days earlier.
- [72] The report states in part that: "He hit his forehead on the windscreen and sustained bruises. There was allegedly transient loss of consciousness. Clinical examinations revealed multiple bruises and lacerations in the frontal scalp, peri-orbital region and a tender swelling in the anterior wall of the axilla. A chest x-ray and CT scan done on request came out normal. He was managed conservatively on analgesics, antibiotics and wound dressing."
- [73] With respect to damages for personal injuries in our jurisdictions, general damages are usually assessed according to the guidelines laid down by Wooding C.J. in **Conniliac v St. Louis**<sup>6</sup> where the following matters were laid down to be taken into account: nature and extent of the injuries sustained; the nature and gravity of the resulting disability; the pain and suffering endured; the loss of amenities suffered; and the extent to which, consequently, the claimants pecuniary prospects have been materially affected.
- [74] Based on the doctors report; the only matters that must be considered in this case are the injuries sustained and the pain and suffering which had to be endured. In this connection the court notes that manner in which the doctor said he managed the 1<sup>st</sup> defendant's bruises, laceration and swelling. There is nothing remarkable.
- [75] Having regard to prior awards in cases cited<sup>7</sup>, the amount of \$1,500.00 is awarded as general damages.

Issue No.

Who is liable in costs

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<sup>6</sup> [1965] 7 WIR 491, 4492. See also: Gilbert Kodilinge, Tort, cases and Materials, Chapter 14

<sup>7</sup> See: Sheldon Jules v Brent Williams et al, DOMHCV2009/0018; Randy James v Leroy Lewis, Alden Lewis, Sammy's Concrete Incorporated, ANUHCV2007/003

[76] The claimant's case against the 2<sup>nd</sup> defendant was dismissed while the 1<sup>st</sup> defendant won his case. As such liability for costs falls on the claimant who must pay the 2<sup>nd</sup> defendant \$3,500.00 and the 1<sup>st</sup> defendant prescribed costs based on the award of damages.

### ORDER

IT IS HEREBY ORDERED AND DECLARED as follows:

1. Based on the holding in **Morgans v Lauchbury** the evidence does not establish that the 1<sup>st</sup> defendant was the 2<sup>nd</sup> defendant's servant or agent at the material time, and vicarious liability has not been established to place liability on the 2<sup>nd</sup> defendant.
2. The claimant's claim in negligence against the 1<sup>st</sup> and 2<sup>nd</sup> defendants fails and the 1<sup>st</sup> defendant's counterclaim succeeds because
  - (a) The claimant's vehicle was travelling at a greater speed than that of the 1<sup>st</sup> defendant vehicle;
  - (b) The claimant's vehicle was the striking vehicle which dislodged the front right wheel and apron of the 1<sup>st</sup> defendant's vehicle and the dislodged wheel travelled in the same direction as the claimant's vehicle, being towards Roseau;
  - (c) The claimant was in breach of the duty of care owed to the 1<sup>st</sup> defendant which breach caused the damage to the defendants' vehicle and the 1<sup>st</sup> defendant himself.
3. The following amounts are awarded to the 1<sup>st</sup> defendant as damages:
  - (a) \$10,000.00 being the pre-accident value of the vehicle, and
  - (b) \$1,000.00 as nominal damages for loss of use of his vehicle,
  - (c) \$1,500.00 as general damages for injuries sustained and pain and suffering.
4. The claimant must pay the 2<sup>nd</sup> defendant costs of \$3,500.00 and prescribed costs to the 1<sup>st</sup> defendant based on the damages awarded



**Justice Errol L. Thomas**

High Court Judge (Ag)