IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2015/0461

BETWEEEN:

EMROL PHILLIP
NICOLE PHILLIP

Claimants

and

PAUL GREENIDGE
DANIEL JAMES

Defendants

Appearances:

Ms. Hazel Hopkin of Counsel for the Claimants
The Claimants being present
The First-named Defendant being present and unrepresented
The Second-named Defendant being absent

2018: January 16th

ASSESSMENT OF DAMAGES

BACKGROUND

[1] **WALLACE, M.:** This claim arose out of a motor vehicular accident occurring on 29th November 2013 at the Kirani James Boulevard.

[2] On 13th October 2015 the Claimants issued proceedings against the Defendants. The Defendants filed a defence on 13th November 2015 denying any collision between the parties and denying any negligence on their part. Summary

Judgment was entered on the 27th July 2016 for the Claimants with damages to be assessed.

[3] The Claimants state that the accident occurred as a result of the First Claimant trying to avoid what was perceived to be a potential head-on collision with the vehicle owned by the First Defendant and driven by the Second Defendant and that as a result of the evasive manoeuvre, which was purely undertaken as a result of the Second Defendant's negligent driving, the Second Claimant's motor vehicle sustained damage.

ASSESSMENT

Claim

[4] Counsel for both parties were directed to make written submissions, upon which the Court would determine the damages. The Defendants contributed to the assessment by assisting in narrowing the areas of damages where there was disagreement. There was no personal injury claim made by the Claimants. While a general claim for *"damages for negligence/breach of statutory duty by the Defendant, its servants or agents"* was pleaded in the Statement of Claim, this claim was not advanced or substantiated in the Claimants' submissions. Therefore the Court is not required to consider whether there is any quantum to be assessed with respect to general damages and no award is made.

[5] The Claimants claimed interest and costs together with special damages as follows:

[1] $12,558.38 representing the cost of effecting repairs to the Claimants' vehicle

[2] $3,150.00 for loss of use of the Claimants' vehicle

[3] $750.00 legal fees

Total special damages: $16,458.38

Repairs to vehicle

[6] It is trite law that special damages which are generally capable of exact calculation have to be specially pleaded and proved. The principle with regards to special damages is elucidated in ***Ilkiw v Samuels***[1] per Lord Goddard:-

> *"special damages in the sense of monetary loss which the Plaintiff has sustained up to the date of trial must be pleaded and particularized. One can recover in action only special damages which has been pleaded and proved at trial."*

[7] It is a well-established principle that the measure of damages is intended to place the plaintiff in the same position as they would have been but for the occurrence of the tortious act by the defendant. Where chattels have been damaged the measure of loss is the cost of repairing the chattel or, in instances where this is not possible, whether because it is unreasonable from a business perspective or the chattel is damaged beyond repair, the replacement cost of the chattel, in an available market may be a justified alternative consideration. In instances where replacement is not an option, then substitution of the chattel may be considered. If this is inappropriate then the measure of loss is the value to the plaintiff at the time of the loss.

[8] In instances where the claimant executes repairs then the expenses and overheads incurred as a result of the accident or tortious act are recoverable. If partial repairs are undertaken by the claimant, then the damages which are equivalent to fully remedying the harm done to the claimant are recoverable.

[9] The sum of $5,541.19 relating to invoices dated 19th December 2013, 16th March 2014, 23rd May 2014 and 16th June 2014 for work previously undertaken to the Second Claimant's vehicle has been properly pleaded, particularized and proved

[1] (1963) 1 WLR 1006.

and the Court shall grant an award of special damages in respect of the sum of $5,541.19.

[10] The remaining amount claimed for vehicle repairs of $7,017.19 relates to an invoice dated 22nd June 2015 ("2015 Invoice") in respect of: one wheel, one steering rack, one rear right window switch and one rear left window switch. Presumably, the labour costs for installation is not included, but no evidence was laid before the Court on the point. The repairs requiring these parts have not been undertaken by the Claimants, who both state at paragraph 14 of each of their respective witness statements that they have been unable to complete the repairs owing to the financial burden placed upon them as a result of the damage to the vehicle.

[11] A [Claimant] is required to take reasonable steps to mitigate his loss and cannot recover for repairs which are more expensive than is necessary to restore the chattel to the same condition of a commercial equivalent. The fact that repairs have not been carried out by the time of trial or even that they are never carried out is no obstacle to an award of damages based on an estimate.[2] Whilst it is agreed that unreasonable delays resulting in an increase in the costs of repair can constitute a failure to mitigate, delay resulting from waiting for a determination as to liability has not been held to be unreasonable.

[12] The Claimants' position is that the works were not undertaken due to their impecuniosity. The Defendants have to take the Claimants as they find them and in this case the impecuniosity was caused by the Defendants' actions and so it would be unequitable to use the impecuniosity as a bar to prevent the Claimants from being properly compensated.

[13] The Defendants' argument that (i) the Claimants have failed to show a nexus between the repairs/parts required in the 2015 Invoice and the accident two (2)

[2] Halsbury's Laws of England, 4th Edition, Vol 12(1), paragraph 862.

years prior and (ii) that the 2015 quotation form is not comprehensive, in that it does not outline the repairs which are required to restore the Claimants' vehicle to its pre-accident state and (iii) that there is no full survey report. The Court is of the view that the fact that the 2015 quotation form for the repairs has been prepared almost two (2) years after the date of the accident raises concerns in terms of causation and remoteness.

[14] I am satisfied that the Claimants have suffered some loss but the repair costs are of a fairly high value, their evidence is somewhat lacking and they have not fully substantiated the amount sought. There is no evidence of pre-accident value, post-accident value, whether the vehicle was damaged beyond reasonable repair or any replacement value before the Court. I am inclined to make an award for repairs pursuant to quotation dated 22nd June 2015 discounting the amount of $7,017.19 claimed by the Claimants by 50% making a total of $3,508.60.

Loss of Use

[15] The claim for loss of use is one for the sum of $3,150.00 which equates to $150.00 per day for 21 days. The Claimants submit that their claim is reasonable and that our courts have in certain circumstances awarded $250.00 per day for sixty-six days, this was the award given in ***Malcolm Joseph*** in relation to a profit making chattel.

[16] In ***Dale James and another v Eamon Gibbons***[3] which concerned a chattel used for both business and personal use, Master Actie states:-

> *"Quite apart from the absence of written evidence to substantiate the amounts claimed by the claimants the court in such circumstances can rely on the oral evidence of the claimants and witnesses to reach an amount which is not out of scale. The Court of Appeal in Attorney General of Antigua and Barbuda v The Estate of Cyril Thomas Bufton Lona Eileen*

[3] DOMHCV236/2014.

Bufton held that the failure of the claimant or counsel to provide evidence of value does not mean, however, that the court is inescapably driven to refuse to award any amount for an undoubted loss. The court referred to the Privy Council decision in Greer v Alston's Engineering Sales and Services Ltd quoting from McGregor on Damages 13th Ed at para 295 stated:

> *"Nominal damages may also be awarded where the fact of a loss is shown but the necessary evidence as to its amount is not given. This is only a subsidiary situation, but it is important to distinguish it from the usual case of nominal damages awarded where there is a technical liability but no loss. In the present case the problem is simply one of proof, not of absence of loss but of absence of evidence of the amount of loss.'"*

[17] The case ***Malcolm Joseph and Doris Joseph v Alison Charles***[4] supports the proposition that where there is no receipt or documentary evidence available reasonable and informed estimations may be accepted as proof of loss, in the absence of contrary evidence. The case at bar is one where use of a reasonable and informed estimation is appropriate. The Defendants have not disputed the period of loss nor the sum of one hundred and fifty dollars ($150.00) per day and I consider the claim to be reasonable especially in circumstances where the accident took place almost four (4) years ago and the Claimants have claimed for only twenty-one (21) days. I award $3,150.00 for loss of use of the Claimants' motor vehicle.

Replacement tyres

[18] The claim for replacement tyres was not established at the start of proceedings in the Claim Form and Statement of Claim. The Claimants first purport to claim damages for tyres in each of their respective witness statements dated 18th July

[4] GDAHCV2002/0077.

2016 at paragraphs 7 and 8. The Claimants allege that immediately upon the accident occurring the left tyre blew out and consequently had to be replaced at a cost of $395.00. The Claimants further state in evidence that every three months they must change their tyres as a result of the damage done to the vehicle, which causes tyres to become worn in an unusually short period of time, whereas this was not the position prior to the accident.

[19] The principle established in ***Malcolm Joseph*** arguably applies here also and a reasonable and informed estimation could be considered sufficient in the absence of documentary evidence. However, at the forefront of my mind I must take into consideration that the onus of proving loss is upon the person alleging loss, and in the absence of such evidence the claim must fail.

[20] This case can be differentiated from ***Grant v Motilal Moonan Ltd and Another***[5] as in that case the claimants' special damages claim related to items in her home which were destroyed through the negligence of the defendant, years after she would have acquired these possessions; it was therefore reasonable and foreseeable that she would perhaps not have kept receipts for each of these household items in anticipation that a car would have ploughed into her home at some later stage. The Court found that the making of a list of her possessions with the value stated next to each was sufficient for her special damages claim, that she was not expected to obtain the services of a valuer and that to expect anything more would have been verging on pedantic. The instant case is distinguishable as the Claimants incurred the costs for replacement tyres after the accident; whereas the claimant in **Grant** would have incurred all of the expenses for her possessions before the act of negligence.

[21] I shall make no award for the initial replacement tyre or the tyres allegedly required and obtained thereafter as the Claimant's did not sufficiently plead, particularize and prove special damages for replacement tyres. This is a loss which the

[5] (1988) 43 WIR 372.

Claimant could very reasonably be expected to record by retaining the receipts as documentary evidence. There is also no report, survey or independent evidence to verify that the requirement for replacement tyres was directly linked to the vehicle's condition as a result of the accident and the loss is therefore too remote.

Legal Fees

[22] I make an award of $750.00 with respect to legal fees; the damage was particularized and pleaded but was not proved. However, the award is made in line with the principles in ***Dale v James***.

IT IS HEREBY ORDERED:-

[23] In summary it is ordered that the Defendants shall pay the Claimants special damages in the sum of $9,799.79 as follows:

[1] $5,541.19 for repair works undertaken

[2] $3,508.60 in respect of the amount claimed pursuant to the June 2015 Quotation.

[3] $750.00 for legal fees

[24] I award interest on special damages of $9,049.79 at the rate of 3% per annum from the date of accident to the date of judgment.

[25] I award interest on $9,799.79 following judgment at the rate provided in the Judgment Act from today's date to the date of payment in full.

[26] I award prescribed costs on the total amount of the damages awarded as per Rule 65.5(3)(4)(B)(ii) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000. The Defendants are liable for 60% of the Prescribed Costs.

Yvette Wallace
Master

BY THE COURT

REGISTRAR
SUPREME COURT
GRENADA
WEST INDIES