

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO: SVGHCV2012/0278

BETWEEN:

RALPH SCOTT

CLAIMANT

-AND-

THE CENTRAL WATER & SEWAGE AUTHORITY

DEFENDANT

Appearances:

Mr. Jaundy Martin of counsel for the Claimant

Mr. Samuel Commissiong of counsel for the Defendant

2017: May 3
2018: October 1

JUDGMENT

- [1] **Cottle, J:** The Claimant was the owner and driver of a passenger van which he plied for hire. The defendant is a statutory corporation. The instant claim by the claimant is to recover damages for loss caused by the negligence of the defendant.
- [2] The claimant avers that on November 25, 2017 around 5:55 a.m. he was driving his vehicle along the Vigie Highway when it came into contact with a metal duct cover which the defendants had installed in the roadway.
- [3] According to the claimant, the cover had become loose and projected above the level of the roadway. It struck the undercarriage of the claimant's vehicle. The effect of the impact was to damage the claimant's vehicle to such an extent that it was written off.

- [4] The defendant filed a defence. It was alleged that the claimant caused his own loss by driving on the wrong side of the road with a defective undercarriage. He permitted that defective undercarriage to come into contact with the metal duct cover, pulling it out of its formerly safe position. The defendant denied any liability.
- [5] At the case management conference, the court ordered the parties to file witness statements by a given date. The defendant failed to comply. The defendant later subsequently applied for an extension of time to file its witness statement. This application did not succeed.
- [6] When the matter came up for trial, the only evidence led was that of the claimant and his witness. Counsel for the defendant cross-examined both.

THE EVIDENCE

- [7] The claimant relied on his witness statement. He swore that he was driving normally on the correct side of the road when he heard a loud noise. He stopped his vehicle and upon checking noticed the heavy metal duct cover, about 8 inches by 12 inches, had become dislodged by impact with his vehicle. It became loose and lodged in the underbody of his vehicle. It travelled several feet with his vehicle before he was able to stop. As a result of the impact there was severe damage to the front end and underbody of his vehicle. The engine was leaking oil onto the roadway.
- [8] The claimant retrieved the duct cover. He had his vehicle towed to a garage near his home. He took the duct cover to the defendant's business office. He then returned to the scene of the accident with employees of the defendant.
- [9] He noticed a metal box embedded in the roadway. This box had no cover. The Claimant has not been able to repair his vehicle. He swears that he lacks the financial means to do so.

- [10] He was cross-examined by counsel for the defendant. He maintained his version of how the incident occurred. He swore he earned \$2,500.00 per month from operating his van after expenses were deducted.
- [11] Since the accident he has tried his hand at farming and producing coals. From this he earns about \$500.00 per month.
- [12] Chesley Browne is the mechanic who inspected the vehicle shortly after the accident. He saw damage to the engine and parts of the undercarriage. He thought the vehicle could be repaired and this would be worthwhile. He put the cost of repairs at \$15,115.00.
- [13] The only evidence came from the claimant. The effect of the cross-examination was not such a nature as to discredit the evidence for the claimant. In the circumstances, this court has no trouble in finding that the claimant has established his case and the defendant is liable. The only issue which gives pause is the measure of damages to compensate the claimant.
- [14] In this regard I am content to accept this evidence of Chesley Browne and award \$15,115.00 as cost of repairs.
- [15] The issue of loss of income is less simple. The claimant has a duty to mitigate his losses. He also has a duty to prove his loss of income as special damages. Counsel for the claimant, in his written submissions accepted that the claimant has provided no documentary proof of the claim for loss of income. He cited the case of **Greer v. Alston Engineering** 63 WIR 388 in support of his argument that this failure to precisely prove special damages is not fatal to the claimant. The court is still empowered to make a nominal award that is not out of scale. This course was adopted by the Court in **Patsy Isaacs and Amos Isaacs v. Andre C. Browne SVGHCV2010/0250.** The Court awarded \$2,760.00 as special damages in circumstances where the claimant produced an invoice evidencing an obligation to pay a quality Surveyor for his professional services.
- [16] The court was clear that this was not a receipt showing payment yet the court was prepared to award it as a nominal sum that was not out of scale. The present position is different. The

claimant has presented nothing upon which the court can make an informed assessment of his claim for \$128,000.00 as loss of income. He has filed no income tax returns. Under cross-examination he swore he earned a net sum of approximately \$2,500.00 per month. His efforts at mitigation by farming and burning charcoal yielded about \$500.00 per month.

[17] In the state of the evidence this court is not prepared to speculate. I therefore make no award for special damages for loss of income as the claimant has not strictly proved these special damages.

THE AWARD

[18] Judgment is entered for the claimant in the sum of \$15,115.00 for the cost of repairs. The defendant will pay the claimant prescribed costs on this sum.

**Brian S. Cottle
HIGH COURT JUDGE**

By Court

Registrar