



[2023] JMSC Civ.170

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2020CV04125

BETWEEN	FAITH GOWDIE-EDWARDS	CLAIMANT
AND	LAMAR RICHARDS	1ST DEFENDANT
AND	THEO HORATIO BROWN	2ND DEFENDANT

IN OPEN COURT

Representation: Nathan Dawkins instructed by Nunes Scholefield Deleon and Co for the Claimant

Defendants absent and unrepresented

Heard: June 28th, 2023 and October 11th 2023

Assessment of Damages — Property Damage — Total Loss — Loss of Earnings

T. HUTCHINSON SHELLY, J

[1] This matter which came before me for assessment of damages had its origins in a motor vehicle collision which occurred on the 2nd of November 2019 at the intersection of Lady Musgrave Road, Hope Road and East Kings House Road. The collision occurred when a Toyota Axio registered **8843 JD** which was being driven by the Defendant collided with the Claimant's Nissan motor car registered **PJ 6693** causing extensive damage and loss and rendering it immobile.

[2] The matter was uncontested as the Defendants who were served on the 21st of November and 1st of December 020 failed to file an acknowledgment of service. Default Judgment was entered on the 28th of April 2021 after which the matter was listed for Assessment of Damages. The Defendants were served with notice of assessment, witness statement of the Claimant, notice of intention to rely on hearsay evidence and a number of additional documents on the 27th of March 2023, but failed to attend or participate in the hearing.

[3] The Claimant requested compensation for special damages for which she produced documentary evidence:

a.	Property damage	\$1,093,700.00
b.	Cost of Assessor's Report	\$10,000.00
c.	Wrecker cost	\$48,000.00
d.	Police Report	\$3,000.00
e.	Loss of income and continuing	\$1,248,000.00
	Total	<u>\$2,402,700.00</u>

[4] On my review of the receipts presented in respect of sums paid for the wrecker fee, police report and assessor's report on the property loss, I found that the Claimant had proved these expenses in the sum of **Sixty-One Thousand Dollars (\$61,000.00)**.

Property Loss

[5] In respect of the documentation produced by Peak Auto Repairs Limited, I note that this was a report which addressed the extensive damage done to the Claimant's motor vehicle as a result of this collision. An examination of this document reveals that every panel of the Claimant's vehicle was damaged and had to be repaired and/or replaced. This included the front bumper, right doors, fender, windshield, engine mount, bonnet, airbags, radiator, transmission and chassis. The total cost of parts needed was stated as **Six Hundred and Eighty-**

Six Thousand Seven Hundred Dollars (\$686,700.00). The additional cost to paint, remove, replace and/or repair parts brought the overall figure to **One Million Ninety-Three Thousand Seven Hundred Dollars (\$1,093,700.00).**

- [6] In the Assessor's Report which was prepared by Advanced Insurance Adjusters Limited, the adjuster made reference to the total repair bill and noted that the pre-accident value of the vehicle was actually **Eight Hundred Thousand Dollars (\$800,000.00).** The salvage value of same was stated as **Two Hundred and Fifty Thousand Dollars (\$250,000.00).** This figure was then deducted from the pre-accident value in order to arrive at the total loss and this was stated at **Five Hundred and Fifty Thousand Dollars (\$550,000.00).** The report outlines that the percentage of repairs compared to the actual value of the vehicle was 136.7% thereby denoting same as a total loss.
- [7] It is the incontrovertible evidence of Mrs Gowdie-Edwards that she was unable to repair the vehicle in light of the prohibitive cost of doing so. She suffered a further setback as the terms of her third party insurance policy meant that she received no compensation from her insurers for the value of her vehicle.

Loss of Income

- [8] Mrs Gowdie-Edwards also seeks an award for loss of income, which at the time of her witness statement in March 2023, was calculated as amounting to **Three Million Four Hundred and Sixty Thousand Dollars (\$3,460,000.00).** This figure was based on the fact that the vehicle in question was being used as hackney carriage at the time of the collision. It had been duly licensed and registered as a PPV (public passenger vehicle). The vehicle was also registered with On-Time Taxi Service. The Claimant placed into evidence an agreement between herself and the authorized driver in which it was agreed in January 2019 that the Claimant would be paid the sum of **Four Thousand Dollars (\$4000.00)** daily from the profits made. Mrs Gowdie-Edwards stated that this agreement was still in operation at the

time of the collision and she has lost out on the income which she had expected would have been generated by this venture.

Discussion

- [9] It is an established principle that special damages, which are generally capable of exact calculation, must be specially pleaded and proved. Therefore, in any action in which a claimant seeks to recover special damages, he has a duty to prove his loss strictly¹. The authorities have demonstrated however that the court has some discretion in relaxing the rule in the interest of fairness and justice, depending on the particular circumstances of the case².
- [10] In respect of the property damage and loss, the Claimant is required to foot the bill of repairing her motor vehicle out of pocket as there are no funds to be had from her Insurers. The result of this is that she has been placed in a worse position post-accident as even though her vehicle had only been valued at **Eight Hundred Thousand Dollars (\$800,000.00)**, its additional value was found in the fact that it had been used for generating an income for her.
- [11] As a direct result of the collision, the Claimant has been left without a vehicle and an income. She has no expectations of an insurance pay-out and the salvage value of **Two Hundred and Fifty Thousand Dollars (\$250,000.00)** can only be described as nominal at best. It is settled law that the purpose of an award of damages is to place the individual back in the position that he would have been in had the accident not occurred and in this situation this can only be achieved by making an award for the sum of **One Million and Ninety-Three Thousand Seven Hundred Dollars (\$1,093,700.00)**. This award better reflects the actual loss

¹ **Lawford Murphy v Luther Mills** (1976) 14 JLR 119

² **Julius Roy v Audrey Jolly** [2012] JMCA Civ. 63

suffered by the Claimant and would allow for the vehicle to be repaired and returned to the purpose for which it had been utilised.

- [12] In respect of the claim for loss of earnings, the Claimant relies on the agreement which was mentioned above. The estimated loss was pleaded at **Four Thousand Dollars (\$4000.00)** per day and 6 days a week in the sum of **Twenty-Four Thousand Dollars (\$24,000.00)** weekly over 173 weeks. Where there was a public holiday, it was agreed between the parties that this figure would be adjusted by a day. In arriving at a decision as to whether this sum should be awarded, I am mindful of the fact that there has been no evidence presented to challenge same.
- [13] I have also taken note of the Court of Appeal decision of *Brenton Davis v Eaton Burke et al SCCA 85/2001* which was cited by Counsel for the Claimant. In that matter, the Court of Appeal affirmed an award of 130 working days for loss of use and awarded loss of income in circumstances where the Claimant had no documentary or other evidence that he was contracted to any bauxite company, or, in respect of the income he allegedly earned from using his vehicle in this operation.
- [14] While both cases concerned income earning chattels, in the instant claim, Mrs Gowdie-Edwards had a structured agreement which outlined the sums payable weekly. In my analysis of the appropriate award, I carefully considered the appropriate period for which compensation should be paid, bearing in mind the duty of the Claimant to mitigate his/her loss. I observed that the Claimant failed to provide evidence of other efforts which had been made over this 4-year period to generate an income. There was also no evidence which showed a sustained period of impecuniosity for 4 years. Having carefully considered the foregoing factors, I am satisfied that the appropriate approach is to make an award to the Claimant for a 12-month period in the sum of **One Million Two Hundred and Forty-Eight Thousand Dollars (\$1,248,000.00)**.

Conclusion

[15] Accordingly, damages payable to the Claimant are assessed as follows:

- (a) Special Damages in the sum of **One Million One Hundred and Fifty-Four Thousand Seven Hundred Dollars (\$1,154,700.00)** at 3 % interest to be applied from the 2nd of November 2019 to October 11th, 2023.
- (b) Loss of Earnings in the sum of **One Million Two Hundred and Forty-Eight Thousand Dollars (\$1,248,000.00)**.
- (c) Costs to the Claimant to be taxed if not agreed.