IN THE SUPREME COURT OF BELIZE A.D. 2020

CLAIM NO. 295 OF 2020

BETWEEN

LUIS EDUARDO GARCIA

CLAIMANT

AND

EDMUND CASTRO

DEFENDANT

Before: Honourable Westmin R.A. James (Ag)

Date: 27th October 2020

Appearances: Mrs Julieann Bradley Ellis for the Claimant

Mr Norman Rodriguez for the Defendant

DECISION ON ASSESSMENT

Facts

1. The Claimant's claim against the Defendant arises out of a motor vehicle accident on 20th January 2020 along the George Price Highway, Belize District, which resulted in damage to the Claimant's 2005 Chevy Silverado Pickup Truck C-08294. The Claimant filed a claim in which he alleged the damages were caused by the negligence of the Defendant whilst driving CY C-39642. The Defendant failed to file an Acknowledgment of Service or a Defence and the Claimant obtained a judgment in default with damages to be assessed.

2. The Defendant's Attorney appeared at the hearing of the Assessment but had not by that time made an application to set aside the Default Judgment and so according to Part 12.13 CPR could only make submissions with regard to (a) costs; (b) the time of payment of any judgment debt; and (c) enforcement of the judgment.

3. The Claimant pleads loss and damage incurred as a result of the damage to his motor vehicle which he used in the course of his business. He has also set out in his affidavits supporting the application for Assessment of Damages, his claim loss of income and loss of use.

Damage to the Vehicle

4. As a result of the accident, the Claimant has indicated that his vehicle suffered significant damage including structural damage and asked the court to award the pre-accident market value rather than the cost of repair. The Claimant has therefore claimed the pre-accident market value of the vehicle less the amount he received for the wreck.

5. The law provides that a Claimant is prima facie entitled to recover the cost of repair of the vehicle. This does not necessarily apply where it is uneconomical to repair the vehicle and, in those circumstances, a Claimant will be entitled to the cost of a replacement. The measure of damages in such a case would be the market value of the motor vehicle minus the value of the wreck.

6. In the present case based on the assessment conducted by R/T Auto and Sales Co. Ltd the rear left portion of the vehicle was pushed upwards and to the left, the chassis was pushed to the right and a variance in chassis misalignment of over 3

inches. The drive train was also damaged and there was damage to the vehicle's structural integrity. The repairs were estimated to costs between $20,000-$25,000.00 but there was the possibility of hidden damages. The pre-accident value of the vehicle was $30,000.00. Having regard to the damage to the structural integrity and the cost of repair as compared to the pre-accident value, the vehicle was considered a total loss by the adjuster. The Claimant was able to get $6,500.00 for the salvage. In all of the circumstances, I would accept that it was uneconomical to repair the vehicle with the significant structural damage and possibility of hidden damage and award the Claimant the sum of **$23,500.00** which represents the pre-accident value less the purchase price of the salvage.

Is the Claimant entitled to loss of income and loss of use?

7. Since the decision of the House of Lords in ***The Owners of No 7 Steam Sand Pump Dredger v The Owners of SS "Greta Holme" (The "Greta Holme")*** [1897] AC 596, 66 LJP 166, 8 Asp MLC 317 it has been accepted that the owner of a chattel damaged by a third party who is unable to establish a claim for special damages is entitled to recover general damages for loss of use.

8. According to ***Liesbosch Dredger v SS Edison*** [1933] AC 449 the measure of damages in the case of a profit-earning chattel is the value of the chattel at the time and place of the loss and included a capital sum made up of the market price, at the time, of a comparable chattel; the cost of adapting transporting and insuring the new chattel and *compensation for disturbance and loss suffered by the owners in carrying out their contract between the date of the accident and the date when a substitute chattel could have reasonably been available for use, that is its loss of use*, "but neglecting any special loss or extra expense due to the financial position of one or other of the parties." Therefore, the Claimant can receive damages for loss of use.

9. Loss of use is determined by the time it would reasonably take for a Claimant to get a replacement vehicle: see the pronouncement of Jones J in ***Lynette Hughes v Dougnath Deonarine & Ryan Deonarine CV234/1998 (HC T&T)*** that, *"It is trite law that the usual period for loss of use in the case where the chattel is repairable is the length of time it would have taken to repair the chattel. Where it is uneconomical to repair the claim for loss of use is limited to the time it would have reasonably taken to obtain a replacement."*

10. The Claimant claimed he was impecunious and so was not in a financial position to repair the vehicle, purchase a new vehicle or rent a comparable one. Whilst his being impecunious should not be ignored, it is something to be considered within the contextual framework of each individual case: see ***Hughes v Deonarine (supra)*** where a detailed analysis of the authorities was undertaken.

11. No evidence was led either in the report or the Claimant's Affidavit as to a reasonable time it would have taken to repair his vehicle. In the present case, it was not established on the evidence that the Claimant was so impecunious that he could not purchase another vehicle since he was still working. Further, there was no evidence that he was unable to get a rental for a similar replacement vehicle especially since his own evidence was that he hired another person to do his transportation for him.

12. So, in the circumstances what is a reasonable period for loss of use. In ***Lynette Hughes (supra)*** the Court used the date of the sale of the wreck as an indicator of the reasonable time for loss of use. In the present case that would be in some 4 months after the date of the accident. However, the evidence of the Claimant was

that he was attempting to sell the wreck for more than $9,000.00 and only in May 2020 was he able to sell the wreck for $6,500.00. The R/T Auto and Sales Co. Ltd report submitted by the Claimant indicated that the wreck was worth $7,500.00. The Court holds that it was not reasonable or wise for the Claimant to attempt to sell the wreck for more than it was worth and which would account for why he was only able to sell it in May after a price reduction. In those circumstances, I cannot find that 4 months was a reasonable time. In ***Juan Carlos Estrada et al v Fabian Rivero*** Claim No 268 of 2007 referred to by the Claimant, the Court held that in relation to Belize given the high costs of hire, two months was a reasonable time.

13. In all the circumstances of the case including the fact of the Claimant's impecuniosity I find that a period of two months was sufficient time for the Claimant to sell the wreck, find a replacement vehicle and/or obtain a loan for its purchase. The Claimant has not put any evidence before the Court of the cost of the rental of a similar vehicle during this period. This Court however, accepts that the Claimant's vehicle was an income generator or one that was used in the course of his business before he suffered the loss. Its loss therefore would have resulted in the loss of income. In absence of rental amount, I will assess what loss of income during the period of two months is recoverable by the Claimant.

Cost for Freight for transporting disinfecting and cleaning solutions

14. At paragraph 8 of his First Affidavit, the Claimant indicated that the vehicle was used in his business LCM Enterprises through which he provided installation, labour and transportation to Eco Friendly Solutions Ltd and other clients. He indicated that he lost the cost of freight for transporting disinfecting and cleaning

and solutions from the Western Border to Eco Friendly Solutions Ltd's office for which he used the services of Espat Services for a total of $1,650.00. To prove these sums, he submitted three invoices. These invoices were not invoices to the Claimant but to Eco Friendly Solutions Ltd from a Tanya Espat of Tanya Espat Custom's Brokerage. None of these invoices indicated that the sums paid, were paid by the Claimant nor that the freight costs contained in those invoices were for the Claimant. Further, the Claimant did not call the makers of the document to give any evidence of the same. In those circumstances, the Court cannot allow this aspect of his claim.

Loss of Use (Transportation for delivery of materials and equipment)

15. The Claimant also indicates that he lost the fee for transportation for the delivery of material and equipment for the projects totalling $5,640.00. He indicated that he had to arrange another service provider to carry out this aspect of his job. He has submitted cash vouchers in which he issued to Mike Hulse for the period from January 20th to April 2nd 2020. It was reasonable for the Claimant to hire someone else to do transportation for him during the time his vehicle was not operable. He is therefore entitled to be repaid the costs for the two months that I have indicated is reasonable to recover loss. This amounts to Four Thousand Two Hundred and Ninety dollars (**$4,290.00).**

Loss of income (Recycling)

16. The Claimant gave evidence that he lost income that he would have derived by the use of his vehicle for the collection of recyclables such as waste cooking oil, glass and hard plastics from Placencia which was done every 15 days and had to

be discontinued due to the lack of adequate transportation. He indicated that he lost an average profit per run of $900.00 which amounts to $4,500.00. He attached previous invoices from LCM Enterprises to Belize Interlocking Pavers and Blocks for drums of recycled crushed glass. There were some inconsistencies with the invoices submitted by the Claimant in this regard. Firstly, the invoices attached were once a month rather than every two weeks as indicated. Further, there was no evidence as to why the Claimant did not rent a vehicle or hired a vehicle for the day as he previously did with the transportation for delivery of materials and equipment. In all of the circumstances, I do not find that this was proven and so the Court will not award anything under this head.

17. Costs of these proceedings will be awarded pursuant to prescribed costs having regard to all the circumstances. Interests will be charged on the total sum awarded, at the rate of 6% from the date of the accident.

Conclusion

18. In the circumstances the Claimant is entitled to the following:
    1. the sum of **$ 23,500.00** representing the market value of the motor vehicle minus the sum received for the wreck;
    2. the sum of **$4,290.00** representing his loss of use/income for a two month period
    3. Prescribed costs awarded to the Claimant in the amount of **$4,168.50.**
    4. Interest at the rate of 6% from the date of the accident
    5. post-judgment interest at the statutory rate of 6% is awarded on the judgment sum until the date of payment.

Westmin R.A. James

Justice of the Supreme Court (Ag)