

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO. ANUHCV2009/0056

BETWEEN:

**JACK SCOTT
ZENEIDA SCOTT** Claimants

AND

**WAYNE ROBINSON
CATHERINE TYSON** Defendants

Appearances:

Mr. Septimus Rhudd for the Claimants

Mrs. Eleanor Solomon for the Defendants

.....
2010: October 18, 21
.....

JUDGMENT

[1] **GONSALVES, J. [Ag]:** This case arises out of a motor vehicle accident that occurred on the 14th day of November, 2004 along Market Street in the city of St. John, involving Toyota motor car registration number A15155 owned by the First-named Claimant Jack Scott and being driven at the time by the Second-named Claimant his wife Zeneida Scott, and Honda CR-V motor jeep registration number A8863 owned by the Second-named Defendant Catherine Tyson and being driven at the time by the First-named Defendant, her son Wayne Robinson. At the commencement of the trial Mr. Rhudd indicated that Mr.

Jack Scott was now deceased and that the trial would therefore be proceeding with the remaining Claimant alone.

- [2] In their Statement of Claim, the Claimants averred that the accident was caused entirely by the negligence of the First-named Defendant, Mr. Robinson, while he was driving as the servant and/or agent of the Second-named Defendant, his mother Mrs. Tyson. The Defendants denied this and counterclaimed that the accident was caused entirely by the negligence of the Second-named Claimant, Mrs. Scott, driving as agent and /or servant of the First-named Claimant, Mr. Scott.

THE EVIDENCE

- [3] Mrs. Scott's evidence was that she was the owner of Toyota Corolla Motor car licensed A 15155. Her evidence was that the car was registered in the name of her husband Jack Scott but had been given to her as a gift in January 2001. She denied that she was driving as Mr. Scott's servant or agent. On November 14, 2004 at about 10:45 p.m. she was driving the car, proceeding from west to east on lower Nevis Street in St. John. She was driving at approximately 10 miles per hour as she had just pulled away from being parked on the same Nevis Street. On her arrival at the intersection of Nevis and Market Streets, she applied her brakes and came to a full stop. She looked right and in a southerly direction along Market Street to be sure that it was safe to cross the intersection. She observed that cars were parked on the left side of Market Street a few yards away from the intersection with Nevis Street. She stated that the way the vehicles were parked made it difficult for her to see along the length of Market Street.

- [4] Her evidence was that she then proceeded to slowly and cautiously enter the intersection. Her vehicle was then struck by a motor jeep coming from her right along Market Street. She later learnt that the jeep was being driven by Mr. Robinson. The jeep was coming along, she said, at an excessive rate of speed. As a result of the impact, her vehicle was spun around 180 degrees and suffered extensive damage to the front twisting the body of the vehicle to the left. The jeep being driven by Mr. Robinson ended up approximately 49

feet from the area where the collision occurred, also spun 180 degrees, and also suffered damage.

[5] Mrs. Scott said that she was not speeding and did not drive through the intersection and neither was she driving recklessly. The accident, she said, was caused by Mr. Robinson who was driving at an excessive speed and swerving to avoid vehicles turning onto Nevis Street.

[6] Under cross-examination, Mrs. Scott was showed a picture of the jeep that Mr. Robinson was driving and acknowledged that the picture showed the left side of that vehicle to have been smashed in. She acknowledged that that damage would have been caused by something hitting Mr. Robinson's vehicle in that area. She said Mr. Robinson swerved to avoid a car that was coming into Nevis Street that was in front of him. When asked how would it have been possible for him to swerve if the car was in front of him her answer was simply that when the car turned Mr. Robinson swerved. Mrs. Scott was asked where Mr. Robinson swerved to and her answer was that he swerved behind the car. Mrs. Solomon asked Mrs. Scott to explain how was it that Mr. Robinson could have been travelling at an excessive speed if there was a car in front of him. Mrs. Scott's answer was that when the car turned Mr. Robinson was going at an excessive speed. She maintained that Mr. Robinson was travelling very fast.

[7] Mrs. Solomon asked Mrs. Scott to explain why she moved out into the intersection if she saw Mr. Robinson driving at an excessive speed. Mrs. Scott's answer was that when she saw Mr. Robinson's vehicle she stopped. She denied that it was her vehicle that collided into Mr. Robinson's vehicle or that she was driving fast at the time. She further stated that as a result of the collision her vehicle was spun around 180 degrees. She acknowledged that this occurred because of the impact of her car with Mr. Robinson's jeep.

[8] Mr. Robinson's evidence was that at around 11:30 p.m. on 14th November, 2004 he was driving his mother's jeep up Market Street, that is from south to north along Market Street at approximately 15 miles per hour. He described Market Street as being a one way

street and said that there was no traffic in front or behind of him. As he was passing the Happy Kids Store along Market Street, he noticed headlights coming up Nevis Street, that is driving east to west. He thought the car would have stopped at the stop sign at the corner of Nevis and Market Streets. But as he continued to drive, the car collided into the left side of the jeep. According to Mr. Robinson the car was travelling at approximately 45 miles per hour.

[9] At the time his friend Larry Jacobs was with him in the jeep, sitting in the front on the passenger side. It turns out that this would have been the right front as the jeep was a left hand drive. Mr. Robinson said that he was wearing his seatbelt when the accident occurred. At the time of the initial impact, the jeep was in the middle of Market and Nevis Streets. The jeep eventually ended up on the eastern side of the Paris Shoe Store, in an area called Judgment Square.

[10] As a result of the accident his knee was injured. He got out of the jeep and realized that the front and back door on the left side were completely smashed in and the driver's window was broken. The jeep, he said, was a left hand drive. His friend Larry came out of the jeep before he did and complained about body and chest pain. He did not know whether or not Larry had been wearing a seatbelt. A passer-by stranger called for an ambulance and Larry was taken to the hospital. Mrs. Scott and two other women came out of the other car. They were not injured and Mrs. Scott went to a phone booth and made a call. Shortly thereafter Mr. Jack Scott arrived on the scene. Mr. Robinson then called his mother at around 11:45 pm. At around 12:30 p.m. (sic) two police officers arrived and took measurements and he gave a statement to the police.

[11] It was Mr. Robinson's evidence that the accident occurred as a result of the recklessness and fast driving of Mrs. Scott. The jeep, he stated, was never repaired because it was beyond repair as the chassis was destroyed. The jeep had been taken to Keith Edwards a mechanic who provided an estimate of the pre-accident value of the jeep of \$42, 500.00 and a post accident value of \$5,000.00. Some of the parts were sold by his mother. The

court noted that a copy of the repair estimate of Mr. Edwards was included in the Trial Bundle.

[12] In cross- examination Mr. Robinson indicated that he was a licensed driver since 1996. He indicated that he was coming from home intending to go to Yorks to drop off someone and then to pick up his wife. He could not recall exactly at what time he had left home that night but thought it might have been some time just after 11:00 p.m. He recalled that there were cars parked along the left side of Market Street and he acknowledged Market Street to be a very long street and a single lane street. He did not recall how many cars were parked along that street but did recall that cars were parked along the street close to the area where the accident occurred. He said he had travelled on that road both before and also after the accident and acknowledged that sometimes there are taxis parked in that area on that side (left side) of Market Street and that that area is sometimes used as a taxi stand at night. He stated that there were cars parked in that area on the left hand side but he could not recall how many. When asked whether he agreed that if someone was exiting from Nevis Street and there are cars parked in that area, that the driver would have to come out in the road to see if there were cars coming down, his answer was that it depended on how close the cars were parked. It was not necessary, he said, to drive out that much, maybe a little bit but not that much. He did not agree with the suggestion that if he stopped at the stop sign of Nevis Street, and cars were parked to his right (that is on the left side of Market Street) that if he looked to the right he would not have a clear vision of the vehicles coming up Market Street.

[13] In further cross examination, Mr. Robinson maintained that he was travelling at about 15 miles per hour and that that was his speed for the entire length of Market Street. He did not look at his speedometer but was certain that he was not going "that fast". He agreed that according to the circumstances, even 30 miles per hour would not be considered "that fast" but said that 40 miles per hour could be considered "a little bit fast". He stated that he was right at the corner of the intersection when he noticed the headlights from Mrs. Scott's car and at that time he had no idea of how far away the vehicle was and that he thought the car would have stopped at the stop sign. He said that the jeep would have travelling more

to the right hand side of Market Street as he was passing parked cars on the left side. He stated that when he realized the car was not going to stop he tried to pull away to his right. He indicated that Mrs. Scott's car struck the jeep broadside and that she was travelling at approximately 45 miles per hour. The jeep ended up on the right side of Judgment Square. The back was on the sidewalk of Judgment Square and the jeep was now facing down Market Street.

[14] Mr. Rhudd then cross examined Mr. Robinson on the damage to the jeep. Mr. Robinson agreed that the damage on the left side of the jeep was centralized in the area between the front and rear tyres and that there was no damage beyond the area of the left rear tyre.

[15] Mr. Robinson indicated that the swerving by him was done prior to the jeep being hit. He agreed that the jeep was not propelled up Nevis Street by the collision. He did not agree that if the accident had occurred the way he explained it that the jeep would have sustained damage to its left rear fender. The jeep, he said, spun around but he did not agree that it must have been hit in the rear for it to have turned around that way. He stated that it was because Mrs. Scott's car struck the jeep that the jeep spun around. He did not agree that it was impossible that the jeep could be struck broadside and spin around in the manner it did. After the collision, he said, Mrs. Scott's vehicle was facing the same direction from which it had originally come. Both vehicles had spun 180 degrees. He denied that he was coming up Market Street at an excessive speed. Mr. Rhudd asked Mr. Robinson to examine the picture of the damaged jeep and to look at the damage shown to the right front and to explain how that happened and Mr. Robinson stated that it must have happened when the jeep spun around. Mr. Robinson disagreed with Mr. Rhudd's suggestion that the damaged and skewed front left wheel of the jeep was consistent with the jeep having struck Mrs. Scott's car at an angle. He did not agree with the proposition that if Mrs. Scott's vehicle had struck the jeep at 45 miles per hour that the jeep must have ended up on Nevis Street and he denied that the jeep had struck Ms Scott's vehicle a glancing blow. He indicated that he did not recall any damage to the right hand side of the jeep.

- [16] Mr. Robinson acknowledged that the jeep was never repaired. He further acknowledged that the repair estimate made no mention of a destroyed chassis. He admitted that based on the repair estimate the jeep could have been repaired. His knew that his mother had sold the remainder of the jeep but he could not recall how much she had received. It was his belief that the estimate that had been provided by Mr. Edwards was for all new parts.
- [17] Mr. Rhudd directed Mr. Robinson to the Police Report and asked him to look at the measurement for the distance between the two vehicles after the impact which was 49 feet. In response to Mr. Rhudd, Mr. Robinson pointed out a shorter distance in court that approximated to 25 feet. He stated that he did see the police taking measurements. He was further directed to the respective measurements for the distance from the point of impact to the front of the jeep- being 9 feet, and the distance from the point of impact to the front of Mrs. Scott's car -being 2 feet, and it was suggested to him that his vehicle travelled four times as far as Mrs. Scott's vehicle after the impact and that this suggested that he was speeding but he denied that he was speeding. Mr. Robinson also denied Mr. Rhudd's suggestion that the photographs and measurements told a different story to his own.
- [18] Mrs. Tyson also gave evidence. She indicated that the jeep registration number A8863 belonged to her but that she was not present at the accident. She stated that at around 11:45 pm. Wayne called her to inform her about the accident involving her jeep and her daughter took her to Nevis and Market Streets. When she arrived she saw her jeep and realized it was badly damaged- the back and front left side were badly damaged- "it was dented in". The jeep was in Judgment Square, that being the piece of land directly in front of Paris Shoe Store. Its front was facing Market Street and the other car was in the middle of Market and Nevis Streets, facing west, that is facing down Nevis Street. When she arrived at the scene Jack Scott was not present and he arrived at around the same time as the police. The police arrived about one half hour after she arrived and they took measurements of where the jeep and the car were. She spoke to Mr. Scott and he said he would take responsibility for the accident. The jeep was examined by Mr. Keith Edwards, a mechanic who valued the jeep at \$42, 500.00 pre-accident and \$5, 000.00 post-accident. Mrs. Tyson stated that as a result of the accident she did not have a vehicle to use and

that she had been without a vehicle since then. The jeep, she said, could not be repaired as the chassis was completely destroyed. Some of the parts of the jeep were sold and the total amount she collected from the sale of those parts was \$4,000.00. Her loss she says was EC\$33, 500.00 and EC\$200.00 per day since the accident for loss of use.

[19] In cross examination, Mrs. Tyson stated that she was not present at the accident. She could not remember how long she had had the jeep. She recalled that her son had left home with Larry Jacobs that night and said she was surprised to hear he had been in an accident. As she approached the area of the accident, she saw the accident scene from about 35 feet away. She saw one car in the middle of the road and it was facing back down Nevis Street and as she got closer she saw her jeep. It was on the pavement by Judgment Square. She identified the photos of the jeep that were in the Trial Bundle as having been taken by her. She said that these were taken a week after the accident as she and Wayne had travelled to Dominica the very next day. She and Wayne were standing close to the vehicle when the police were taking the measurements and had a clear view. When Mr. Scott told her that he would accept responsibility, Wayne was not there but her daughter was.

[20] Ms. Tyson was cross examined as to whether she really knew what a chassis was. Her description was that it was a piece of iron under the jeep. Her attention was directed to the repair estimate and it was put to her that nowhere did it refer to any chassis damage. She said that that was what Mr. Edwards had said to her. She said it was Wayne and herself who went to Mr. Keith Edwards to obtain the repair estimate. Mr. Edwards came to her house to look at the jeep after she and Wayne had returned from Dominica. She admitted in cross examination that the reason she did not repair the jeep was because she did not have the money at the time. She agreed that Mr. Edwards said that it could be repaired in 16 days. She said she handled the sale of the jeep. When asked why she had said that she sold some of the parts and not the entire vehicle she said that she had been approached by someone to sell some of the parts and had suggested to that person that he buy the entire jeep itself. She insisted that she did not sell parts from the jeep. She neither spoke to her son Wayne nor her insurance on the proposed sale of the jeep as she

only had third-party insurance. The damaged jeep was sold about one year after the accident. She stated that she did give the purchaser a receipt and that she had not seen the jeep on the road since then.

[21] The final witness was Mr. Lerrydow Jacobs. His evidence was that he was in the jeep with Wayne Robinson at the time of the accident. They had just dropped Mrs. Tyson and Wayne's aunt at their respective homes at Creekside and were driving along Market Street. Wayne was driving at approximately 10 to 15 miles per hour. They were going to pick up Wayne's wife and then drop Mr. Jacobs to his home at York's. Mr. Jacobs was in the front passenger seat of the jeep. They were at the junction of Nevis and Market Streets when a vehicle smashed into the left side of the jeep. The accident caused the jeep to land on the sidewalk or the banking of Market Street, at the corner opposite Paris Shoe Store, in an area called Judgment Square. As a result of the accident he hit his head and shoulder. On emerging from the jeep he complained to Wayne that his body and chest were hurting and he fainted. He remembers being placed in an ambulance and being taken to hospital.

[22] He said that just before the accident he saw a silver car driving up Nevis Street extremely fast. Wayne had swerved to the right in an effort to avoid a collision but it was too late. There were no cars in front of the vehicle and there were no cars driving in front of the jeep. It was a Sunday. After about a half-hour at the hospital he returned to the scene of the accident and he met Jack Scott and the police.

[23] In cross examination, Mr. Jacobs said that Wayne was not hustling as they had sufficient time to pick up Wayne's wife who worked at Kentucky Fried Chicken. When asked why he estimated Wayne's speed at 10-15 miles per hour that night, he said it was because there were one or two vehicles that night on Market Street- some were parked and some were moving. However, he stated, neither the vehicles that were parked nor those that were moving blocked Wayne in a way to cause him to drive at 10-15 miles per hour. The vehicles that were in front were at such a distance away that they could have speeded if they wanted to. The vehicle that was ahead was more than 75 feet away. He said he first

became aware of the other car in the collision minutes after the impact. He could not recall if the radio was playing. He did not see the lights coming up and did not see Mrs. Scott. He said that maybe his eyes were closed for a brief moment. He stated that the windows of the jeep were tinted. He could not help as to the speed that Mrs. Scott was driving and he could not say whether she stopped at the intersection. After the collision the jeep was pushed to the opposite side of the road, by Judgment Square, but not all of the jeep was in Judgment Square. He did not get a chance to see the other vehicle and the only time he saw it was when he came back from the hospital and saw it on the wrecker. Mr. Rhudd then put to him that in paragraph 6 of his witness statement he had said that he saw a silver car driving up Nevis Street and to explain this since he was now saying that he did not see the car until he returned from the hospital. After much hesitation, Mr. Jacobs stated that the written statement was the accurate one.

[24] In further cross examination Mr. Jacobs said that when he came back from the hospital Mrs. Scott's car was facing up Nevis Street. Mr. Rhudd put to him that this could not be correct as both Mr. Robinson and Ms. Tyson said the vehicle was facing the direction it had come from, that is down Nevis Street. Mr. Jacobs' response was that he could only say what he saw. Mr. Rhudd brought Mr. Jacobs back to the issue of the "silver car" mentioned in his witness statement and asked him what alerted him to this vehicle that would have been coming from his left. Mr. Jacob's response was that the engine speed and the tyres so alerted him. Mr. Rhudd then suggested to Mr. Jacobs' that his original testimony in cross examination, that is, that he saw Mrs. Scott's vehicle for the first time a few minutes after the impact was in fact the correct version. Mr. Rhudd suggested to Mr. Jacobs that his only truthful recollection of the accident was of the impact and nothing else, and that he did not see how the accident happened and Mr. Jacobs' response was that he saw what he said he saw. Mr. Rhudd finally put to Mr. Jacobs that bearing in mind that Mr. Jacobs would have been sitting in the front right seat of the jeep, it would have been impossible for him to have seen Mrs. Scott vehicle coming up Nevis Street and Mr. Jacobs' reply was that each person sits differently in a vehicle.

[25] I noted the inconsistencies in the evidence given by Mr. Jacobs in relation to what he saw or did not see, as it pertained to how the accident occurred. His evidence on cross-examination in this regard differed fundamentally from his evidence in his witness statement. Additionally his demeanour and general attitude also caused me to view his evidence with suspicion. In the end I found his evidence in this regard to be manifestly unreliable and agreed with Mr. Rhudd that Mr. Jacob's only credible statement on this issue was in relation to his recollection of the impact and nothing more.

ANALYSIS

[26] Having reviewed the evidence in full, I am left in no real doubt about how this accident occurred. Mr. Rhudd suggested to Mr. Robinson that the jeep struck Mrs. Scott's car a glancing blow. He referred to the damage at the front of Mr. Robinson's jeep and also highlighted that the major damage occurred in the area between the front and rear tyres of the jeep on its left side. I looked at the pictures showing the damage to the jeep. The damage to the front left of the jeep was minimal and Mr. Robinson's explanation that this might have happened when the jeep spun around appears plausible. It appears plausible because I did not accept that the front of the jeep struck Mrs. Scott's car. Had it done so, the left front of the jeep would have sustained major damage-it did not. Further it is not possible that the front of the jeep would have struck Mrs. Scott's car a glancing blow as Mr. Rhudd suggested and that Mrs. Scott's car would have still been able to impact the jeep in its center left side, with the damage being restricted to the area between the wheels. The major damage was to the centre left side, between the front and rear wheels, which was smashed in. This was clearly consistent with Mrs. Scott's car striking the jeep broadside as Mrs. Scott's car came out of Nevis Street while the jeep was passing in front of her on Market Street. Mr. Robinson said he tried to veer to his right, and that forward angled movement coupled with the force of being struck by Mrs. Scott's car would have explained why the jeep spun around almost 180 degrees. The deep impact damage on the jeep shown in the picture demonstrates that Mrs. Scott must have been travelling at more than 10 miles per hour, and supports Mr. Robinson's contention that she was travelling at approximately 45 miles per hour. This deep impact, along with the fact that Mr. Robinson's

jeep was moving forward at the time of the impact, would also have explained why Mrs. Scott's car was spun around.

[27] Mr. Rhudd suggested that the distance between both vehicles of 49 feet suggests that Mr. Robinson was speeding. I do not accept this. With Mr. Robinson veering to his right and being struck by Mrs. Scott (who I find to have been travelling at much more than 10 miles per hour) it is not unreasonable that his jeep ended up some 49 feet away. Mr. Rudd also suggested that the jeep had travelled 4 times as far as the car had travelled, from the point of impact, and that this again suggested the jeep was speeding. Again I do not agree. Mrs. Scott's car struck the center of the jeep broadside and her car spun around. But the jeep was moving when Mrs. Scott's car struck it and it continued moving. Thus it must have traveled a farther distance than her car would have in the circumstances.

[28] I do not think that Mrs. Scott stopped at the junction. I find that she did not stop and proceeded into the junction when it was unsafe to do so and struck the jeep. It is interesting to note that in paragraph 5 of her Statement of Claim Mrs. Scott averred that she came to a complete stop at the intersection and having looked right saw what would have been the jeep being driven at an excessive speed. At paragraph 6 she averred that her car was still in a stationery position when the collision occurred. At paragraph 5 of her witness statement she said that the way the vehicles were parked made it difficult for her to see along the length of Market Street. In paragraph 6 of her witness statement she said "I then proceeded to slowly and cautiously enter the intersection." So by this she admitted that she was moving into the intersection and was not stationery when the collision occurred. I do believe she entered the intersection but I do not believe she did so slowly and cautiously. The impact damage to the jeep suggests that she was not travelling slowly and cautiously. By failing to stop at the stop sign and by proceeding into the junction in the way she did she was negligent.

[29] In the circumstances, the claim against the Defendants Mr. Robinson and Mrs. Tyson is dismissed as I find that Mrs. Scott was solely responsible for the accident.

[30] Mr. Rhudd rightly put to Mr. Robinson and Mrs. Tyson that Mr. Edwards' repair estimate did not have any reference to any damage to the chassis of the jeep. The repair estimate placed a pre-accident value on the jeep of \$42, 500.00 and a post-accident value of \$5, 000.00. The damaged jeep was sold for \$4,000.00. This would have resulted in a loss of EC\$ 37, 500.00 to the owner of the jeep, Mrs. Tyson. However in her statement of claim she claimed only \$33, 500.00 and this was repeated in her witness statement. This was arrived at by deducting both the post accident value of \$5,000.00 and the amount for which the jeep was sold of \$4000.00 from the pre-accident value. This did not appear to be correct if no parts were sold and the only sale was of the jeep as whole. However the use of this calculation by the Defendants on their counterclaim would suggest that there was some justification in Mr. Rhudd's inquiry into whether or not parts were in fact sold separate and apart from the sale of the remainder of the vehicle. In any event \$33, 500.00 is the sum claimed in this regard and I award this sum representing the loss of the vehicle.

[31] Mrs. Tyson also claimed loss of use at \$200.00 per day from the date of the accident and continuing. There was no evidence that Mrs. Tyson rented a replacement vehicle. Consequently this claim could only be considered under an award for general damages and not special damages. In such a case the primary element of the award would be to compensate for the trouble and inconvenience caused to Mrs. Tyson by her not having a vehicle ready on hand. See on this Bee v Jenson (2007) EWCA Civ. 923 and Beechwood Birmingham Ltd. v Hoyer Group Ltd. (2010) EWCA Civ. 647. In Beechwood Birmingham Ltd. (supra) the court drew a distinction between claims for loss of use in relation to a chattel employed in the course of a business and claims for loss of use in respect of a private vehicle used for convenience rather than profit. The court stated:

"In the latter class albeit, the court may be concerned with a degree of compensation for fares etc. by way of special damage in a case where the owner has been obliged to use public transport rather than his damaged vehicle, the primary element of the award is that of compensation for non-pecuniary loss i.e. the lack of advantage and inconvenience caused by not

having the use of the car ready and at hand at all hours for personal and /or family use.”

- [32] The tendered repair estimate stated that the jeep could have been repaired and such repairs would have taken 16 days. However Mrs. Tyson said she did not repair the jeep because she did not have the money. Her impecuniosity should not debar her from obtaining an award under this head- see Clippens Oil Co. v Edingburgh and District Water Trustees [1907] A.C. 291 and Lagden v O'Connor [2004] 1 AC 1067.
- [33] In considering the award under this head, the Court noted that Mrs. Tyson provided no details of any actual inconvenience suffered by her. As was stated by Lord Mustill in Giles v Thompson [1994] AC 142, a claimant's loss is not self-proving. However some inconvenience would be assumed by the Court based on Mrs. Tyson's statement that she had been without a vehicle since the accident and bearing in mind that the very night of the accident the vehicle had been in use earlier for her benefit. However, there was no explanation of what the weekly sum claimed of \$200.00 represented- whether it was the standard rate for the rental of a similar vehicle (in which case the issue would then arise as whether the notional cost of hire would be a proper rate to use in a case such as this) or was just an abstract figure.
- [34] In Beechwood Birmingham Ltd v Hoyer Group Limited (supra) the Court recognized the practice of the County Courts there in cases such as these in awarding what was described as “conventional weekly sums based not upon car hire rates but on a modest rising scale of 40 or 50 (pounds sterling) per week in 1995 to 100 (pound sterling) per week in 2005 in respect of disruption and inconvenience caused to individual claimants for loss of use of their private motor car during periods of repair in cases where, for reasons of impecuniosity or otherwise, no substitute vehicle has been hired by, or otherwise made available to, the claimant”. See also on this also Luigi Wells v G4S Security Services (Grenada) Limited Claim No. GDAHCV2008/0416.

[35] In this case the jeep was not repaired at all due to Mrs. Tyson's impecuniosity and she sold it about one year after the accident. Despite the paucity of the evidence before me on this point, I do believe that she would have suffered some inconvenience and that I should make an award of general damages under this head based on a weekly rate of EC\$150.00 for a period of 52 weeks making a total award of EC\$7, 800.00.

[36] In this case the evidence was that the jeep belonged to Mrs. Tyson the Second-named Defendant and there was no evidence that Mrs. Scott was driving at the time as the servant or agent of her husband. Consequently there will be judgment for the Second-named Defendant Mrs. Tyson against the Second-named Claimant Mrs. Scott on the Counterclaim as follows:

- (a) \$33, 500.00 for loss of the jeep;
- (b) \$7, 800.00 for loss of use in terms of disruption and inconvenience;
- (c) Interest pursuant to section 27 of the Eastern Caribbean Supreme Court Act Cap. 143 on the sum in (a) above from the date the award for loss of use ended, i.e. 14th November, 2005 to date of judgment at the rate of 5%;
- (d) Prescribed costs.

.....

Anthony E. Gonsalves
High Court Judge (Ag)