

BARBADOS

IN THE SUPREME COURT OF JUDICATURE  
HIGH COURT  
(CIVIL DIVISION)

[Unreported]

Suit No: CV1088 of 2006

BETWEEN:

DEBRA GREAVES

CLAIMANT

and

ANDREA POWERS  
JOAN GRIMES  
SIMPSON FINANCE LTD

DEFENDANT

Before:

The Honourable Madam Maureen Crane-Scott

Judge of the High Court

Appearances:

Ms. Bernadette D. Callender for the Claimant  
Ms. Liesel Weekes the First and Second Defendants

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2013: August 23  
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**DECISION**

- [1] **Crane-Scott, J:** This is an application by the Claimant for assessment of damages for negligence and wrongful imprisonment pursuant to a default judgment obtained against the First and Second Defendants jointly and severally on the 1<sup>st</sup> day of November, 2006.
- [2] **Background:** The Claimant's action arose in negligence following a motor vehicular collision which occurred on October 31<sup>st</sup>, 2000 in the vicinity of Green Hill, St. Michael in which motor vehicle registration MA-1251 owned and driven by her was rear-ended by motor vehicle registration number T-2922 owned by the Second Defendant and driven by the First Defendant.
- [3] Following the accident, the Claimant and her legal representative submitted a claim for \$9,189.15 being the loss and damage which she had sustained in consequence of the collision to CGI Consumers Guarantee Insurance Company Ltd (hereinafter "CGI") as insurers for the Second Defendant. Her claim was for \$4,509.15 being the full cost of repairs to her vehicle as well as \$4,680.00 being the cost of hiring a substitute vehicle for the period during which her vehicle was undergoing repairs.
- [4] CGI declined to reimburse the Claimant for 100% of her claim and offered instead to settle with her for 70% of her expenses on the basis that she was 30 % to blame for the accident.
- [5] On March 7<sup>th</sup>, 2001 CGI issued a cheque in the amount of \$3,156.41 to Corbin's Garage in respect of the repairs to the Claimant's vehicle, and on April 3<sup>rd</sup>, 2001 CGI issued a cheque to the Claimant in the sum of \$2,244.17 being 70% of her claim for loss of use of her vehicle. On receipt of these amounts, the Claimant refused to execute a release in the Defendant's and/or CGI's favour as she did not accept them in full and final settlement of her claim.
- [6] The Claimant says that as a result of CGI's failure to settle 100% of her claim, she defaulted on her obligation to pay for the rental for the vehicle which she had hired from a Mr. Edward Byer for a 6 week period following the collision on the assurance that liability for the accident had been accepted.
- [7] Due to the non-payment of the vehicle rental, Mr. Byer commenced legal proceedings against the Claimant in High Court Suit No: 1291 of 2001 to recover the sum of \$3,900.00 in respect of the amount due for the hire of the vehicle. The Claimant failed to defend Mr. Byer's claim and a default judgment was duly entered against her in the sum of \$3,900.00 with interest thereon at 8% and costs of \$617.25.
- [8] The Claimant took no action also in relation to the judgment and Mr. Byer filed a Judgment Summons for the unsatisfied debt on the 9<sup>th</sup> January, 2002. The Summons was heard on the 4<sup>th</sup> June, 2002 and the Claimant was ordered to satisfy the debt on or before the 15<sup>th</sup>, July, 2002 failing which she would be committed to prison for 28 days.
- [9] The Claimant failed to satisfy the judgment debt within the time stipulated in the order and on April 22<sup>nd</sup>, 2004, a warrant of committal was

issued against her. The warrant was executed on June 2<sup>nd</sup>, 2004 and the Claimant was arrested and made to pay the sum of \$5,873.66 being the judgment debt, interest and costs, the cost of the Judgment Summons and the Chief Marshal's fees.

[10] The Claimant instituted the current proceedings against the Defendants on the 14<sup>th</sup> June, 2006 claiming special damages of \$5,742.23 being the balance due in respect of the loss and damage sustained in consequence of the collision together with interest and costs awarded against her in High Court Suit No: 1291 of 2001.

[11] Finally, on November 19<sup>th</sup>, 2010, just over 10 years following the collision, CGI on behalf of the First and Second Defendants paid to the Claimant the sum of \$5,742.33 in full settlement of her claim for special damages in the current proceedings.

[12] Issues to be Determined: In the Joint Pre-Trial Memorandum filed in the proceedings on July 4, 2011, the parties identified the following issues for the Court's determination at the hearing:

- i) Whether the Claimant is entitled to damages for the additional losses caused to her by her incarceration on June 2, 2004?
- ii) Whether the case is such that an award of aggravated damages can be made?
- iii) If so, is such an award for aggravated damages proper in the circumstances of the instant case?
- iv) What if any interest is to be awarded to the Claimant on the sum of \$5,873.66 or any part thereof paid on the Claimant's behalf on June 2<sup>nd</sup>, 2004?

[13] Decision of the Court: After considering the pleadings, the evidence, the applicable law and the respective submissions of Counsel for both parties, the Court has made the following determinations:

- i) Special damages: The Claimant's claim for an additional award of \$131.33 being special damages for expenses incurred in securing her release from committal on June 2, 2004 is denied for the following reasons: (a) No amendment was made to Paragraph 12 of the Amended Statement of Claim to include this amount as an additional item of special damages; (b) notwithstanding that the Defendants endeavoured to settle the claim for special damages by paying the cost of the judgment and interest thereon at 2<sup>nd</sup> June, 2004, the expenses are too remote. In short, having applied the reasonable foreseeability test established in **Wagon Mound (No 1)** the Court is satisfied that when this motor vehicular accident occurred on October 31<sup>st</sup>, 2000, the reasonable man would not have foreseen that when the First Defendant rear-ended the Claimant's vehicle that some four (4) years later she would have been arrested for failure to satisfy a judgment debt.
- ii) General Damages for injury sustained pursuant to paragraph 13: The Claimant's claim for an additional award of general compensatory "damages pursuant to paragraph 13..." on account of her wrongful imprisonment for failure to honour the committal warrant issued in respect of Mr. Byer's judgment debt in High Court Suit No: 1291 of 2001 is also denied on the basis that her claim is too remote. Having applied the reasonable foreseeability test established in **Wagon Mound (No 1)** the Court is satisfied that when this motor vehicular accident occurred on October 31<sup>st</sup>, 2000, the reasonable man would not have foreseen that when the First Defendant rear-ended the Claimant's vehicle that some four (4) years later she would have been arrested for failure to satisfy a judgment debt. Additionally, paragraph 13 fails to disclose a cause of action against the Defendant for which damages for false imprisonment or wrongful imprisonment can properly be assessed.
- iii) Aggravated Damages: Given my findings in relation to item (ii) general damages, an award for aggravated damages will also not be made.
- iv) Interest: The Claimant is awarded interest on the special damages of \$5,742.23 being the amount of her claim for special damages at the rate of 6 % per annum between June 2, 2004 and November 11, 2010 when same was settled in full.

[14] Disposal: In the result the Court's decision is as follows:

- 1) The Claimant's claim for special damages of \$131.33 (being additional expenses incurred in securing the Claimant's release from committal on June 2, 2004) is denied;
- 2) The Claimant's claim for an award of general compensatory "damages pursuant to paragraph 13..." on account of her wrongful imprisonment is also denied;
- 3) The Claimant's claim for an award of "aggravated damages..." is also denied;
- 4) The Claimant is awarded interest on the sum of \$5,742.23 being the amount of her claim for special damages at the rate of 6 % per annum between June 2, 2004 and November 11, 2010 when same was settled in full;
- 5) Costs are awarded to the Claimant certified fit for one attorney-at-law to be agreed or assessed.

**Maureen Crane-Scott**  
Judge of the High Court