

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

HCA 2178 of 1993

BETWEEN

ESTHER COLE SAMMY

Plaintiff

AND

**JALEEL FYZOOOL
MOHANLAL NANDLAL**

Defendant

Before: Master Margaret Y Mohammed

Appearances:

Ms Marsha King for the Plaintiff

Mr Ronnie Bissessar instructed by Ms Maicoo for the First Defendant.

DECISION- ASSESSMENT OF DAMAGES

Introduction

1. Some 19 years ago, in March 1993 there was an unfortunate accident whereby the house situate at No. 418 Bonne Aventure Road, Gasparillo (“the house”) and its contents were destroyed by a fire caused by the actions of the first defendant. The plaintiff instituted proceedings under the Rules of the Supreme Court 3 months thereafter seeking damages

for her loss which she quantified in the sum of \$150,000 for the house and its contents in the sum of \$100,000. Some 10 years after the incident the parties entered a consent order on liability (“the consent order”) and the assessment of damages was referred to the Master by Mendonca J (as he then was). At the assessment of damages, there are 2 issues for determination. The first is what is the effect of the consent order and the second is whether the plaintiff has proven her loss as pleaded in her amended statement of claim. I have concluded that the effect of the consent order is the first defendant has conceded that he is liable to the plaintiff for her loss. However, the plaintiff has failed to prove her loss as pleaded for the reasons set out hereafter and as such I award nominal damages in the sum of \$ 20,000.

What is the effect of the consent order?

2. The consent order is an admission by the first defendant that the plaintiff has suffered loss as a result of his negligence and it is for the Master to quantify the plaintiff’s loss. The terms of the consent order entered before Mendonca J (as he then was) on June 10, 2003 were *“By consent judgment for the plaintiff against the first defendant for damages to be assessed by a Master in Chambers on a date to be fixed by the Registrar. The first defendant to pay the plaintiff’s costs to be taxed in default of agreement. Leave to the plaintiff to discontinue the action against the second defendant with no order as to costs.”*
3. The plaintiff in her amended statement of claim pleaded that *“at all material times the Plaintiff was the owner and occupier of the dwelling house known and assessed as 418 Bonne Aventure Road, Gasparillo¹”*. The defendant made no admission to this allegation in his defence². In light of these paragraphs one of the issues for determination at the trial was the plaintiff’s ownership or occupation of the house. Therefore at the liability stage of the trial the onus was on the plaintiff to establish that (1) she was the owner or

¹ Paragraph 1 of the amended statement of claim filed December 19, 1996

² Paragraph 1 of the defence filed October 18, 1993

occupier of the house and (2) as a result of the first defendant's negligence the house was damaged causing her to suffer loss.

4. The first defendant's reliance on the exclusionary principle that the plaintiff has not satisfied the court that she was the owner or had an interest in the house at the assessment of damages is ill-founded. I agree with the attorney for the plaintiff that the effect of the consent order is the first defendant was liable to the plaintiff in damages for the loss of the house and its contents and the first defendant cannot now dispute the ownership of the house since he failed to challenge it when the consent order was made. In my view the reliance by the first defendant on this principle ought to have been raised at the liability stage of the trial and it is now too late to do so. The role of the court at the assessment of damages stage is not to revisit liability but rather to examine the evidence in support of the plaintiff's loss.

Has the plaintiff proven her loss of the house in the sum of \$150,000 ?

5. The plaintiff has not persuaded the court that she has suffered the loss of the house in the sum of \$150,000 as claimed. The plaintiff pleaded in her amended statement of claim that she was the owner and occupier of the house and as a result of the fire she has been deprived of her house, personal effects and put through great hardship and stress. The particulars of her special damages pleaded for loss of the house was the sum of \$150,000. The evidence in support of this claim came from the plaintiff's brother Carl Cole and a valuer Clifton Dookhoo.
6. The position adopted by the local courts with respect to the proof of special damages by an aggrieved party is clear. In **Anand Rampersad v Willies Ice-Cream Ltd**³ Archie JA (as he then was) stated "*The rule is that the Plaintiff must prove his loss. The correct approach is as stated by Lord Goddard, CJ in Bonham-Carter v Hyde Park Hotel [1948] 64 Law Times 177: "Plaintiffs must understand that if they bring actions for damages it is for them to prove their damages; it is not enough to write down the particulars, and, so*

³ Civ Appeal 20 of 2002

to speak, throw them at the head of the Court saying: “This is what I have lost; I ask you to give me these damages. They have to prove it.” He also noted that the degree of strictness required by the law appears to be less certain since it depends on *“what is reasonable in the circumstances”*⁴ and he offered a word of caution to judicial officers in conducting such an exercise *“not to assume the role of adjuster or estimator. The Plaintiff/Respondent cannot simply present a list of prices; it must show the basis upon which the figures are established.”*⁵ In **Uris Grant v Motilal Moonan Ltd**⁶ Chief Justice Bernard pointed out that the courts should be realistic and accept that the particularity must be tailored to the facts and in **Sookoo and another v Ramnarace Ramdath**⁷ Chief Justice de la Bastide was of the view that the ... *“sort of evidence which a Court should insist on having before venturing to quantify damages will vary according to the nature of the item...”*.

7. The first defendant agreed at the liability stage of the trial that the plaintiff was the owner and occupier of the house at the time of the accident. However based on the evidence presented I am not satisfied that the plaintiff has proven her loss of the house in the sum of \$150,000 as pleaded for the following reasons:
 - (a) The evidence of the expert witness, Clifton Dookhoo, the valuer was at most thin and of little assistance. Clifton Dookhoo first visited the house some 7 years after the fire in October, 2000. He acknowledged that he did not examine the house before the fire and his information on the house prior to the fire was based on instructions by Carl Cole.
 - (b) Carl Cole gave a description of the type of material the house was constructed of, the number of the rooms, the condition of the house and its structure. However there was no evidence of when the house was built. Further this witness stated at paragraph 5 of his witness statement⁸ that *“at the time of the fire, the house had just been renovated.*

⁴ Civ Appeal 20 of 2002 at page 9

⁵ Civ Appeal 20 of 2002 at page 10

⁶ 43 WIR 372

⁷ 61 WIR 400 at 404

⁸ Filed September 30, 2011

Two rooms had been added upstairs. The roof and the back steps had been changed and the entire house rewired. I had built the renovations with the help of my brother, Ramnarine Cole. The house was in good condition since my siblings and I maintained the home.” Yet there was no evidence on the amount of money expended on the materials used in the renovations which could have assisted the court in determining the value of the house before the fire.

Has the plaintiff proven her loss of the contents of the house in the sum of \$100,000?

8. The plaintiff has failed to satisfy the court that she suffered the loss of the contents of the house in the sum of \$100,000 as pleaded for the following reasons:
 - (a) There was no evidence that the items lost in the fire were the plaintiff's.
 - (b) It was not clear from the evidence if the jewelry lost in the fire was the plaintiff's and if it was that it was valued at \$25,000. Paragraph 9 of the Carl Cole's witness statement refers to.... *“Some of Esther's jewelry and Chandra's and Monica's jewelry were in their room”* The only inference is the jewelry lost were that of 3 persons: the plaintiff, Chandra and Monica but no particulars of the jewelry or the value of the plaintiff's jewelry were presented.
 - (c) The quantification of the jewelry lost in the fire as set out in the inventory to the report of Carl Dookhoo at item 19 refers to *“19. Jewelry (makeup, etc) valued at \$25,000.00”*. This item includes all the jewelry lost and other items such as make-up. There was no evidence that Mr Dookhoo saw the jewelry nor had any means of identifying it as the plaintiff's.
9. Evidence was presented of the other items which were lost which were not the plaintiff's but owned by the other occupants of the house. However, they were not parties to the action neither did they bring a claim for their loss.

Can the plaintiff be awarded nominal damages?

10. This is an appropriate case for the plaintiff to be awarded nominal damages since there has been an admission of liability by the first defendant. Earl of Halsbury LC in **The Mediana**⁹ described “*nominal damages*” as “*a technical phrase which means that you have negatived anything like real damage, but that you are affirming by your nominal damages that there is an infraction of a legal right which, though it gives you no right to any real damages at all, yet gives you a right to the verdict on judgment because your legal right has been infringed.*” There is no doubt that the plaintiff’s house was destroyed by fire as a result of the first defendant’s actions to which the first defendant has admitted. The awards by the courts in this jurisdiction on nominal damages within the last 2 years have varied from \$100¹⁰ to \$40,000¹¹ depending on the circumstance of each case. In this case I am prepared to award the plaintiff nominal damages in the sum of \$20,000 against the first defendant.

Order

11. The plaintiff has failed to prove her loss of the sums pleaded namely the sum of \$150,000 for the house and \$100,000 for the loss of the contents.

12. The court awards nominal damages in the sum of \$20,000 to the plaintiff.

13. The first defendant do pay the costs of the assessment to the plaintiff certified fit for advocate attorney to be taxed in default of agreement.

Dated this 2 April , 2012.

Margaret Y Mohammed
Master (Ag.)

⁹ [1900] AC 113 at 116

¹⁰ HCA 544 of 2002 Luthel John v Hollis Collins decision of Brown- Antoine J delivered on July 21, 2010

¹¹ CV 2007-0923 Mary Persad v Ramesh Persad-Maharaj and anor. Decision of Rajkumar J delivered on July 16, 2010