THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-00620

BETWEEN

NIKISHA DE GRAFF-OLIVER

Claimant

AND

DEORAJ JAGGERNAUTH

First Defendant

AND

NAGICO INSURANCE (TRINIDAD AND TOBAGO) LIMITED

Second Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Date of Delivery: Wednesday 9th August 2023

Appearances:

Mr Earl John instructed by Ms Laura A.A. Bailey for the Claimant

Mr. Richard A. Jagai instructed by Mr. Varun A. Debideen for the Defendants

---

JUDGMENT

I. INTRODUCTION AND PROCEDURAL HISTORY

[1] This is a claim for damages in negligence arising out of a vehicular accident in which the Claimant alleges that she was struck by a motor vehicle, PCL 8907, owned and controlled by the First Defendant while crossing at the intersection of the Churchill Roosevelt Highway and O'Meara Road in Arima after the highway traffic lights turned red. As a result of the accident, the Claimant suffered personal injuries, loss and damage.

[2] Accordingly, by Claim Form with supporting Statement of Case filed on March 4th 2016 which was amended on July 19th 2016, the Claimant initiated proceedings against the First Defendant (as owner and driver of motor vehicle PCL 8907) and the Second Defendant (as insurers of the First Defendant) seeking the following reliefs:

(i) Damages for negligence by the First Defendant for the injuries sustained by the Claimant as a result of the accident at the intersection of Churchill Roosevelt Highway and O'Meara Road Arima on or about the 20th September, 2014.

(ii) Costs.

(iii) Interest at the statutory rate of 6% per annum on damages awarded from the date of the accident to the date of judgment and thereafter at the rate of 12% per annum.

(iv) Such further and/or other relief.

[3] In response to the Claim and Statement of Case, the Defendants filed their Defence together with Counterclaim on June 8th 2016 denying liability. On account of the amendment filed by the Claimant, an Amended Defence and Counterclaim was filed on August 18th 2016. The Defendants pleaded that the traffic light was on green when the First Defendant was driving along the highway and the Claimant ran into the side of his vehicle while running across the highway. The Defendants therefore contend that the accident was wholly or in part caused by the Claimant. The Defendants also pleaded that the First Defendant suffered loss and property damage as a result of the actions of the Claimant and thus counterclaimed for the following reliefs:

1. Special damages:
    a) In the sum of $4,500.00 that the First Defendant had advanced towards the purchase and installation of a new windscreen;
    b) The sum of $1,500.00 being the cost to paint and straighten the fender of the First Defendant's vehicle; and
    c) The sum of $2,500.00 being the cost of a rental vehicle for 10 days at $250.00 per day, for the First Defendant's use whilst the said First Defendant's vehicle was impounded and under repair.
2. Further and/or alternatively damages for breach of contract.
3. Interest pursuant to s.25 of the Supreme Court of Judicature Act Chapter 4:01.
4. Costs.
5. Such further and/or other reliefs as the nature of the case may require.

[4] On July 5th 2016 the Claimant filed a Defence to Counterclaim which was amended on October 12th 2016 whereby she denied the allegations of negligence espoused by the Defendants as well as the entitlement to damages on the Counterclaim.

[5] The trial was held on December 4th 2018. In support of the Claimant's case, Ms DeGraff-Oliver, the Claimant, gave evidence on her own behalf along with Dr. David Santana, one of her examining physicians. Although a witness statement was filed for Ms Carlene Estrada, she failed to appear at the trial and the Claimant was unable to explain her absence. Her witness statement was therefore disregarded and not admitted into evidence. Mr Jaggernauth, the First Defendant, gave evidence on his own behalf and Dr Richard Hoford was called as an expert for the Defendants on account of his examination of the Claimant.

[6] Following the trial, the parties filed and exchanged written closing submissions on January 21st 2019. Submissions in reply were filed by the Defendants on February 1st 2019 and by the Claimant on February 15th 2019. It is upon my consideration of the pleadings, the evidence and these submissions that the Court now makes its decision.

II. FACTUAL BACKGROUND

The Claimant's Case

[7] The Claimant averred that on September 20th 2014, she was crossing the Churchill Roosevelt Highway in a southerly direction at the intersection with the O'Meara Road in Arima, after the highway traffic lights turned red. While doing so, the First Defendant, who was proceeding east on the said highway, so negligently drove, managed and controlled his motor vehicle PCP 8907 that he caused or permitted it to collide with the Claimant knocking her down to the ground.

[8] The following particulars of negligence of the First Defendant were pleaded by the Claimant:

(i) Driving too fast.

(ii) Failing to sound his horn in time or give any or any sufficient warning of his presence or approach upon the said highway.

(iii) Failing to observe or heed the presence of the Claimant crossing the road.

(iv) Failing to steer or control the motor vehicle or to apply his brakes adequately or at all so as to avoid knocking over the Claimant.

(v) Failing to have any or any sufficient regard for pedestrians that were or might reasonably be expected to be at the junction.

(vi) Failing to see and/or comply with the red light signal at the traffic light.

(vii) Driving past the stop line when there was a red light signal controlling the First Defendant's line of traffic.

(viii) Diving unto the said intersection when it was unsafe to do so.

Further, the Claimant also relied on facts itself as being evidence of negligence of the First Defendant.

[9] As a result of the alleged negligence of the First Defendant, the Claimant contended that she sustained severe injuries including a fracture to the right knee, laceration to the right temporal region of the skull, complete rupture of the anterior cruciate ligament (ACL), tibial rim compression fracture amongst other physical injuries.

[10] She received treatment on the day of the accident at the Arima Health Facility with follow-up treatment at the Eric Williams Medical Sciences Complex as well as by private medical practitioners. She therefore claims special damages for Loss of Earnings, Future Surgery to repair her knee, Medical Expenses for doctors' visits and medication, as well as transportation costs.

The Defendants' Case

[11] The Defendants averred that the Churchill Roosevelt Highway is a dual carriageway with traffic heading east to Wallerfield and West to Port-of Spain. The Northern side of the road which facilitates eastbound traffic has two (2) main lanes and two merger lanes on approaching the traffic lights. The merger lane on the left facilitates traffic flowing unto O'Meara Road (North) and the extreme right merger lane facilitates traffic flowing unto O'Meara Road (South). The intersection on the eastbound side of the highway is controlled by three traffic lights two of which control traffic heading East

towards Wallerfield and the third which is on the extreme right controls traffic heading to O'Meara Road (South).

[12] On the day in question, the First Defendant contends that he was proceeding in an easterly direction on the highway in the vicinity of the O'Meara intersection in motor vehicle, PCP 8907. He was occupying the right merger lane with approximately two to three vehicles in front of his. There were also several other vehicles at a standstill occupying both lanes heading east, which included dump trucks and vans situated to the left of his vehicle.

[13] When the traffic signal controlling the traffic flow to O'Meara Road (South) turned green, the First Defendant's vehicle was driving at a rolling pace (approximately 5-10 kilometres per hour). Suddenly, the First Defendant heard a loud bang to his vehicle accompanied by a sudden jerk. This was approximately 10-12 feet behind the white line of his lane. He immediately stopped the vehicle and alighted from it. He then noticed a buxom woman, clad in a green uniform, lying on the road to the left (passenger) side of his vehicle. He also observed that the front passenger fender was dented and the left windscreen was damaged.

[14] The First Defendant contends that prior to the Claimant making contact with his vehicle, she was running from a northerly to southerly direction in between vehicles then parked on the eastbound lane, in an attempt to cross from the eastbound lane to the westbound lane.

[15] Immediately following the impact, three other persons wearing similar uniforms to the Claimant, exited a van on the southern side of the westbound highway and came over to the scene of the incident. One of the unknown persons indicated to the First Defendant that they were waiting for the Claimant to take her to work.

[16] Shortly thereafter, the police arrived and they took the Claimant to the hospital. The First Defendant proceeded to the Arima Police Station to make a report of the incident.

[17] The First Defendant further contends that whilst making the report at the police station, one of the unknown female persons at the scene who also wore a green uniform entered the station and identified herself as one of the Claimant's co-workers. She

informed the First Defendant in the presence of a Woman Police Constable that she came from the hospital where the Claimant was and the Claimant indicated that she had not seen the First Defendant's vehicle when she was crossing.

[18] The First Defendant argued that he is not guilty of any negligence as alleged or at all and the matters complained of were caused either wholly or in part by the negligence of the Claimant. He thus pleaded the following particulars of negligence against her:

a) Failing to keep any or any proper look-out or to have any or any sufficient regard for her own safety when crossing the Churchill Roosevelt Highway and/or failing to observe or heed the approach of the First Defendant's vehicle;
b) Stepping into the path of the First Defendant's vehicle without giving any reasonable opportunity of avoiding the said collision;
c) Failing to pay any or any sufficient heed to the presence of the First Defendant's vehicle on the said road;
d) Failing to pay attention to the green traffic light of the First Defendant's merger lane and give way to the First Defendant's vehicle;
e) Crossing or attempting to cross the said road when it was unsafe and dangerous to do so;
f) Failure to see the said Defendant's motor vehicle in sufficient time to avoid the said collision or at all; and
g) Crossing and/or attempting to cross the said road without paying due and/or sufficient regard for the traffic on the road and in particular, the First Defendant's vehicle.

[19] It is also the Defendants' argument that the Claimant is malingering and/or exaggerating her injuries. Her very own and most contemporaneous medical reports reveal injuries which are disproportionate to the damages claimed. The Defendants also reject the claim for loss of earnings and costs of medication and transportation as the Claimant has failed to provide sufficient documentary evidence in support of these claims.

[20] Moreover, by the Counterclaim, the First Defendant also claims damages for the property damage and loss sustained to his vehicle in the collision.

Claimant's Amended Defence to Counterclaim

[21] In response to the Defendant's Amended Defence and Counterclaim, the Claimant denied that there were two to three vehicles in front of the First Defendant's vehicle.

[22] She also contended that upon crossing the first two lanes of the highway after traffic had stopped, she stood in front of a truck in the second lane waiting for the traffic light in the extreme lane to turn red. When the light changed to amber and then red, she looked out and was struck by the First Defendant's vehicle. The Claimant denied that the First Defendant's vehicle was travelling at a rolling pace of 5-10 km/h and contended that it appeared to be accelerating. She also denied that the vehicle was 10-12 feet behind the white line but instead argued that when she was in the middle lane, she looked back and saw a flash of silver grey/blue a long distance away in the extreme right lane. She accordingly denied that she struck the vehicle and stated that she was struck by the vehicle as she looked out.

[23] The Claimant also contested the allegation that she was running in between vehicles at a standstill on the eastbound lane, in an attempt to cross. She averred that she was walking briskly ensuring that the light was red for a sufficient time in front of vehicles, before attempting to cross.

[24] The Claimant all together denied that she was wholly or in part responsible for the accident and any damage sustained to the First Defendant's vehicle.

III. ISSUES

[25] The following issues arise for determination by the Court:

1. **Whether the First Defendant is liable for the injuries, loss and damage suffered by the Claimant? OR**
2. **Whether the Claimant, by her own actions, caused or contributed to her injuries?**
3. **In the event that the Claimant is successful in establishing the liability of the First Defendant, what quantum of damages is owed to the Claimant?**

4. **Conversely, in the event that the Defendants succeed on the Counterclaim, to what measure of damages, if any, is the First Defendant entitled for loss and property damage to his vehicle?**

IV. LAW AND ANALYSIS

[26] The law of negligence is well-established. To prove negligence, a claimant must satisfy the Court on a balance of probabilities that (i) the defendant owed a duty of care to the claimant; (ii) the defendant has breached that duty of care; and (iii) the defendant's breach of his/her duty of care has caused or resulted in damage or loss to the claimant.

[27] It is trite law in the present context of this case that this duty involves taking reasonable care to avoid causing injury or property damage to road users. The standard of care expected of the First Defendant is that of "a competent and experienced driver" as established in **Nettleship v Weston**[1]. While he is not expected to achieve perfection he must be armed with relevant common sense and experience of the way road users behave as expected from any other reasonably prudent and careful driver.

[28] It is evident that the facts as espoused by the Claimant and the Defendants are diametrically opposed. The determination of liability therefore hinges on the Court's finding of the version of the events, from the evidence of the witnesses, it considers to be more likely. Where there is an acute conflict of evidence, as in this case, the Court is mindful of the guidance of the Privy Council in the assessment of evidence in **Reid v Charles**[2] and followed in our courts by Madam Justice Rajnauth-Lee (as she then was) in **McClaren v Dickey**[3], that is, the Court must check its impression of the evidence of the witnesses against:

(1) contemporaneous documents;

(2) the pleaded case; and

(3) the inherent probability or improbability of the rival contentions.

---

[1] [1971] 2 QB 691

[2] **Horace Reid v Dowling Charles and Percival Bain Privy Council Appeal No. 36 of 1987** at page 6 of the judgment of **Lord Ackner**

[3] McClaren v Daniel Dickey CV2006-01661

[29] In doing so, this Court determined that its finding of liability hinged on its resolve of the following disputed facts:

(i) Was the traffic signal red or green in the extreme right merger lane when the Claimant looked out to cross?

(ii) Did the collision take place <u>at</u> the intersection or <u>before</u> the white stop line?

(iii) Was the First Defendant driving at a rolling place or accelerating as contended by the Claimant?

(iv) What was the point of impact on the First Defendant's car?

[30] As a general observation the Court noted the First Defendant's evidence was generally consistent with his pleaded case, however, there were some aspects of his evidence that are unsustainable strictly based on the rules of evidence. From the Defendants' pleaded case and evidence, it is apparent that at no time prior to the collision did the First Defendant see the Claimant. In fact, his account of how the accident occurred was derived from the account of unnamed persons whom the First Defendant alleges spoke to him after the accident. Specifically, a man who allegedly saw the Claimant running between vehicles across the eastbound lane of the highway and an unnamed co-worker of the Claimant who spoke to the First Defendant at the police station and told him of the Claimant's assertion that she did not see his vehicle before she was struck. Neither of these unnamed persons appeared at the trial to give evidence of their account of the accident.

[31] The First Defendant reasoned that he lost the contact number for the man and asserted that the unnamed co-worker though not present at the trial was mentioned in the police report. Notably, the police report is not before this Court for examination. What is before this Court is a station diary extract prepared by Woman Police Constable Fortune which makes no reference to any other person giving a report of the accident besides the First Defendant. Accordingly, these pleaded accounts of the Claimant's conduct before the collision must be disregarded as they amount to inadmissible hearsay evidence.

[32] In this regard, the Court paid particular attention to the Claimant's account of the accident and circumstantial evidence to determine liability.

[33] I found that there were several inconsistencies in the Claimant's evidence that departed from her pleaded case which will be discussed in greater detail below.

Colour of Traffic Signal

[34] The Claimant pleaded in her Amended Defence to Counterclaim that she crossed the two eastbound lanes of the highway and waited in front of a truck in the second lane, for the traffic light in the extreme right merger lane to turn red. She contended that when the light turned from amber to red she looked out and was struck by the First Defendant's vehicle.

[35] In her witness statement, the Claimant testified that she was employed as Supervisor at Japs Fried Chicken Limited in Gulf City Mall, La Romaine, San Fernando and on the day in question she was making her way across the highway in order to wait or be picked up by a vehicle used to transport Japs' staff from Sangre Grande to Gulf City Mall. Upon exiting a Malabar taxi she made her way to the northern side of the highway where she waited until the traffic lights controlling the two eastbound lanes turned red and the traffic halted; then she made her way across. She stated that there were two trucks in the eastbound lanes and the last lane on the extreme right ('the lane in issue') was empty since the light for that lane was on amber. While the light was on amber, the Claimant stated that she stood in front of a truck in the first eastbound lane and when it changed from amber to red she moved to the other truck in the second eastbound lane, immediately preceding the lane in issue. She then peeped out at the side of the second truck, only to see a silver blue vehicle, the First Defendant's vehicle, coming at full speed in her direction.

[36] Under cross-examination, the Claimant asserted that when she started to cross the highway the lights on the lane in issue were on amber while the two traffic lights controlling the eastbound lanes were red. As she made her way across she paid attention to the traffic lights and when the light controlling the lane in issue turned from amber to red, she peeped out partly on her left side into the lane and saw the First Defendant's vehicle. Additionally, the Claimant stated that she did not see any other vehicle parked by the white line on the lane in issue before she started to cross the highway because she was looking at the traffic lights and trying to time when they would change.

[37] Contrastingly, the First Defendant insisted in his evidence that the traffic light controlling the lane in issue was green when he was proceeding.

[38] Evidently, there is a clear divergence in accounts of both parties on the colour of the traffic signal. While I consider it less likely that the traffic light would be on amber for so long to allow the Claimant to make it from one side of the highway to the next with pauses in between in front of vehicles, there is insufficient evidence to disprove either account. In the circumstances, I will have regard to other factors at play in making a determination on liability.

Location of Collision

[39] The First Defendant was consistent in his evidence that the collision took place before the white stop line. However, by the Claimant's particulars of negligence it was suggested that the First Defendant drove past the white stop line and drove into the intersection. In her Amended Defence to Counterclaim she also denied that the vehicle was 10-12 feet behind the white line as alleged by the Defendants. Instead, she argued that when she was in the middle lane, she looked back and saw a flash of silver grey/blue a long distance away in the extreme right lane.

[40] However, in cross-examination, the Claimant stated that she was at the white stop line when she was hit by the First Defendant's vehicle. She later stated that she was hit at the stop light and then agreed that after the vehicle hit her she was lying down before the stop line. These inconsistencies glaringly contradict the Claimant's pleadings. Moreover, I find that these assertions contradict each other for it is implausible that the Claimant could have been hit **at** the stop line or stop light by a vehicle moving at an alleged accelerated speed and ended up lying down **before** the stop light rather than in the intersection.

[41] I therefore consider the evidence of the First Defendant to be more credible on this issue. I am persuaded that the collision occurred approximately 10-12 feet before the stop line. The First Defendant therefore could not have (i) driven past the stop line; (ii) broken the red traffic light; and (iii) driven into the intersection, as alleged by the Claimant.

Speed

[42] The First Defendant, under cross-examination, maintained that he was driving at a speed of 5-10 km/h when the collision took place even though he accepted that it was a slow pace. He testified that the highway on the morning in question was very packed as there were races at the Santa Rosa race track, so there were a lot of vehicles, even turning in to go to the race track. He further noted that there were vehicles in front of him and he had to drive slow as he intended to make a U-turn to go to Signature Park Housing.

[43] In the Claimant's Amended Defence to Counterclaim, she denied that the First Defendant's vehicle was travelling at a rolling pace of 5-10 km/h but asserted that the vehicle appeared to be accelerating. She contended that when she was in the middle lane she looked back and saw a flash of silver grey/blue a long distance away in the extreme right lane.

[44] Under cross-examination, she testified that when she peeped out at the side of the second truck, she saw the First Defendant's vehicle coming from west to east in full speed to hit her; she only had time to blurt out Ohh!!!! She stated that it happened so fast that the next thing she knew she was flying mid-air and was propelled on to another car before landing on the hot pitch.

[45] The Court notes that the Claimant made no mention of the involvement of a second vehicle in her pleaded case or her witness statement. This, to me, is of great significance to the Claimant's case. The question arises as to why was such an important piece evidence omitted from the Claimant's pleadings? It is accepted on the evidence that there were two trucks in the lane next to the lane in issue. The Claimant did not contend that she was propelled onto any of these trucks but rather was propelled onto another car. However, in cross-examination she could not properly identify which lane the said car came from or where it was located. There is also no report of any other vehicle being involved in the accident. I am therefore not convinced that this in fact happened.

[46] Nonetheless, I do not accept the First Defendant's evidence that he was driving at the creeping pace of 5-10 km/h for several reasons. Firstly, the pre-action response letter of the Second Defendant stated that "*our insured shall aver that when he saw the lights*

signalled green, he began to accelerate when he heard a loud bang on the left side of his vehicle and saw something like a shadow when he immediately stopped." Although, the Claimant denied knowledge of this account or giving the statement, I consider it improbable that the insurers would make up an account that was directly in opposition to the First Defendant's pleaded position.

[47] Secondly, when one considers the nature of the Claimant's injuries, specifically the trauma to her head and feet, it is the Court's view that it was more probable than not that these injuries would have been caused by a high impact collision where the First Defendant was driving at an accelerated speed. While the Court makes no determination on the actual or estimated speed at which the First Defendant was driving, I am satisfied on the evidence that he was driving at an accelerated pace when the vehicular collision occurred.

[48] Notwithstanding this, it was made clear in the Claimant's evidence in cross-examination that it was mere seconds between the time she peeped out and saw the First Defendant's vehicle and the collision. It was estimated to be about eighteen to twenty feet. In this regard, although he was driving at an accelerated pace, there was little opportunity for the First Defendant to notice the Claimant far less slow down, sound his horn or apply brakes to avoid hitting her. Moreover, she was in front of a truck which would have made it difficult for the First Defendant to have seen her.

Point of impact on vehicle

[49] Although the Claimant insisted that she was struck by the First Defendant's vehicle she was unable to provide details on what part of the vehicle struck her. There is undisputed evidence that there was some damage to First Defendant's vehicle after the accident. Photographs tendered into evidence revealed a dent to the front passenger left fender and shattering to the front passenger windscreen of the vehicle. It is the Defendants' position that the nature and location of the damage to the vehicle was consistent with their case that the Claimant ran into the side of the First Defendant's vehicle. Taking account of the totality of the evidence and looking at the photographs of the First Defendant's vehicle, I am minded to agree.

[50] If the Claimant was struck by the First Defendant's vehicle, it is more likely that her first point of contact with the vehicle would have been with the front part of the fender

as opposed to the side of the fender closer to the front passenger door. In the absence of any recorded or noticeable damage to the front part of the fender, it is this Court's view that the point of impact on the vehicle is consistent with the case for the Defendants that the Claimant struck the First Defendant's vehicle. This account properly explains the damage to the left passenger fender and the Claimant hitting her head on the left passenger windscreen.

[51] Having regard to the above finding, I am not satisfied on a balance of probabilities that the Claimant has proven her pleaded case of negligence against the First Defendant. In the given circumstances, I consider that the First Defendant did not breach his duty of care to the Claimant and did not cause her injury and loss as a result of the collision. It does not appear reasonable for a prudent driver to expect a pedestrian to cross or step out in a lane of the highway when it is unsafe to do so. Accordingly, the First Defendant did not have a duty to slow down or stop or sound his horn to avoid hitting the Claimant. A highway is not a place to be dodging vehicles seeking to cross to the other side when it is unsafe to do so.

[52] It seems clear to me from the evidence that she was trying to get across to the other side of the highway to meet up with co-workers who were waiting in a vehicle to pick her up to go to work all the way down to Gulf City Mall in La Romaine, San Fernando. The Claimant by her own evidence accepted that she crossed when it was unsafe to do so and as such, she accepted the risk associated with her actions.

[53] I therefore conclude that the Claimant's claim must fail. Given the Court's finding that the First Defendant was not liable for the collision, the question of contributory negligence on the part of the First Defendant and the issue of damages to the Claimant, do not arise.

Defendants' Claim for Damages Re: Counterclaim

[54] In addition to the Court's finding in favour of the Defendants on the issue of liability, I find that the Defendants are also entitled to judgment on the Counterclaim as but for the Claimant's reckless actions, the First Defendant would not have sustained damage to his vehicle in the collision.

[55] I am satisfied that the First Defendant has provided sufficient documentary proof and receipts to demonstrate the special damages claimed for rental of vehicle and repairs to his fender and windscreen. He is therefore entitled to special damages in the sum of $8,500.00 with interest at a rate of 1.5% per annum from the date of the accident to the date of judgment (September 20th 2014 to August 9th 2023). This interest is calculated in the sum of $1,133.48.

[56] However, I do not find that any sufficient foundation was laid for the claim in general damages for breach of contract. I do not consider it to be relevant in the circumstances and as such no further consideration was given to it.

V. DISPOSITION

[57] Having regard to the foregoing analyses and findings, the Order of the Court is as follows:

ORDER

1. **The Claimant's Amended Claim and Statement of Case filed on July 19th 2016 be and is hereby dismissed.**
2. **Judgment be and is hereby entered for the First and Second Defendants on the Counterclaim filed on August 18th 2016.**
3. **The Claimant shall pay to the First Defendant special damages in the sum of $8,500.00 with interest at the rate of 1.5% per annum from the date of the accident (September 20th 2014) to the date of this Judgment (August 9th 2023) calculated in the sum of $1,133.48.**
4. **The Claimant shall also pay to the First and Second Defendants prescribed costs on the Amended Claim quantified in the sum of $14,000 in accordance with Rule 67.5(2)(c) of the CPR 1998 as well as prescribed costs on the Counterclaim in the sum of $2,890.04 in accordance with Rule 67.5(2)(a) of the CPR 1998.**

Robin N Mohammed
Judge