

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
Claim No. 2021/CLE/gen/1282**

B E T W E E N

AUTO H & L LIMITED

Claimant

AND

**ANTHONY STUBBS
(Dba RDA)**

First Defendant

ALFREDO RICHARDS

Second Defendant

Before: Assistant Registrar Akeira Martin
Appearances: Mrs. Erica Munroe appearing for the Claimant
No Appearance for or on behalf of the Defendants
Heard: On the Papers
Ruling Date: 16th March 2026

RULING - ASSESSMENT OF DAMAGES

Judgment in Default of Appearance – Assessment of Damages – Alternative Method of Service – Sections 8 (1) and (2) and 46 of the Road Traffic Act – Negligence – Duty of care of drivers to other road users – Breach of Duty of Care – Damages – General Damages – Special Damages – Special Damages must be specifically pleaded - Interest

Introduction

[1] After obtaining a Judgement in Default of Appearance against the First Defendant and the Second Defendant on 1st November 2024 and 16th December 2021 (the “Default Judgments”), respectively, the Claimant applied to have the damages owed to him assessed. This ruling sets out the amount awarded upon assessment (the “Assessment”).

Factual Background and Procedural History

- [2] The facts, which are undisputed resulting from the Defendants' failure to respond to the claim and to participate in the Assessment, are that on Friday 2nd July 2021, around 12:00 noon a 2005 Mack International garbage truck with registration number MV3288 (the "Vehicle"), was being driven negligently by the Second Defendant, an employee/agent of the First Defendant, while heading North on Woodstock Road.
- [3] The Second Defendant lost control and crashed into the South-Eastern corner of the Claimant's property which caused loss and damage to the Claimant's fence, storage and mechanic building, three of the Claimant's vehicles and some of the Claimant's materials and tools which were situated on its property.
- [4] The Claimant being a company incorporated under the laws of the Commonwealth of The Bahamas, licensed to conduct business as a used car dealership and auto/automotive parts retailer and service provider.
- [5] A Royal Bahamas Police Force, Road Accident Report dated 28th July 2021 (the "Report") charged the Second Defendant with driving without due care and attention contrary to section 46 and driving an uninsured vehicle contrary to section 8 (1) and 8 (2) of the Road Traffic Act (the "Act").
- [6] The Report also charged the First Defendant with permitting the Second Defendant to drive an uninsured vehicle contrary to section 8 (1) and (2) of the Act.
- [7] By way of a Specially Endorsed Writ of Summons filed 29th October 2021 the Claimant commenced the action against the Defendants seeking special damages in the amount of \$86, 098.30 based on the negligence of the Second Defendant with the First Defendant as the owner of the Vehicle being vicariously liable for the Second Defendant (the "Claim").
- [8] The Second Defendant was served with the Claim on 10th November 2021, as evidenced by an Affidavit of Service filed 9th December 2021. After confirmation that no appearance had been entered by the Second Defendant or on his behalf, a Judgement in Default of Appearance was filed on 16th December 2021.
- [9] While a person bearing the name of the First Defendant was served, it was later discovered that it was in fact not the First Defendant. This led to the Claimant applying for and being granted an order to extend the validity of the Claim on 21st May 2024, from that date to a further 6-month period (the "Extended Claim").
- [10] Thereafter, on 5th July 2024 the First Defendant was served with the Extended Claim. After confirmation that no appearance had been entered by the First Defendant, a

Judgement in Default of Appearance was entered against the First Defendant on 1st November 2024.

[11] Judgment being entered against both Defendants, the Claimant sought to have the damages assessed. After some difficulty with locating the First Defendant, leave was granted to effect substituted service of all documents on either of the Defendants on behalf of the other Defendant, upon any person resident at the Defendants' address and in The Tribune and The Nassau Guardian. The Affidavits of Service filed 19th January 2026, 4th February, 2026 and 4th February 2026 confirmed that all the aforementioned methods of service were utilized.

[12] Being satisfied that the Defendants were served with the Default Judgements and the notices and various orders regarding assessment, including the directions for assessment and the assessment date, the decision was made to proceed with the Assessment in the absence of the Defendants, who deprived themselves of the opportunity to participate in and defend the action.

The Assessment

Claimant's Evidence and Submissions

[13] The Claimant relies on the Affidavit of Hal Shears ("Mr. Shears") filed 3rd March 2026 (the "Shears Affidavit") and its Skeleton Arguments dated 4th February 2026.

[14] Mr. Shears, one of the Proprietors of the Claimant, in addition to setting out the factual matrix already been set out in paras. [2] to [5] herein, also set out the expenses incurred to place the Claimant in the position it was in prior to the accident.

[15] The Claimant submits that as it was established by the Report that the Defendants had acted in contravention of Sections 8 (1) and 8 (2) and 46 of the Act, the Defendants had breached a duty of care that was owed to the Claimant as it was foreseeable that the failure to exercise due care would cause harm.

[16] Sections 8 (1) and 8 (2) and 46 of the Act provides,

Sections 8(1) and 8(2),

"(1) Subject to the provisions of this Part of this Act, it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance as complies with the requirements of this Part of this Act.

(2) Any person who acts in contravention of subsection (1) of this section shall be guilty of an offence and shall be liable on summary conviction to a fine of four hundred dollars or to imprisonment for a term of three months, or to both such fine and imprisonment.”

Section 46,

“If any person drives a vehicle on a road without due care and attention or without reasonable consideration for other persons using the road, he shall be guilty of an offence and liable on summary conviction therefor to a fine of two hundred dollars.”

[17] The Claimant relies on the definition of Negligence which was respectively characterized by **Black’s Law Dictionary** and Alderson B in **Blythe v Birmingham Waterworks [1843-60] ALL ER Rep 478** as,

“Negligence” “The failure to exercise the standard of care that a reasonable prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally and wantonly, or willfully disregarding of other’s rights.

“Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which prudent and reasonable man would do, or doing something which a prudent and reasonable man would not do.”

[18] The Claimant submits that even though the Second Defendant owed a duty of care to all persons operating a vehicle on the road to operate in a safe manner, he also owed a duty of care to every person occupying the vicinity not to do or cause any harm or damages to their person or property, in this case, the Claimant’s perimeter fence, storage and mechanic building, its vehicles and its tools and equipment.

[19] The Claimant further submits that the Second Defendant breached the duty of care by failing to operate the Vehicle with the necessary due care and attention thereby causing damage to the Claimant’s property.

[20] Likewise, the First Defendant, while not the driver of the vehicle, also owes the Claimant a duty of care and negligently breached that duty when he knowingly permitted the Second Defendant to drive his uninsured commercial Vehicle on the road which caused damage to the Claimant’s property.

[21] Accordingly, both parties are liable for the damages the Claimant's property sustained and seeks compensation for loss and damages as follows:

i. Crane Truck	\$1400.00
ii. Terranova Construction Company	\$43,102.15
iii. Fence replacement	\$1,822.44
iv. Task Force Security Services Ltd.	\$540.00
v. Touch Control Ltd.	\$1,632.50
vi. Installation Services	\$1,567.00
vii. Miller's Electrical Services	\$4,101.00
viii. Damage to 2008 Pontiac	\$2,800.00
ix. Gulf Cart repairs	\$1,983.71
x. Fire Extinguisher	\$126.28
xi. Construction materials & vacuum	\$338.75
xii. Loss of Income (Brendt Williams)	\$6,400.00
xiii. Floor Jack	\$294.00
xiv. Tools	\$850.00
Total	\$66,957.83

[22] The Claimant seeks recompensation for the following.

[23] The 18 x 20 and 22 x 40 wood and metal storage and mechanical garage building sustained considerable damage to its roof. Car parts, tools and the shelves to house them were damaged. This resulted in the Claimant hiring a crane truck, bob cat services and Terranova Construction Company Ltd to remove the damaged building and to reconstruct it.

[24] As the Defendants' negligence tore down the fence surrounding the southeastern corner of the Claimant's property, the Claimant hired Complete Fence to replace the damaged fence and also had to hire Task Force Security Services Ltd. while the new fence was being erected and the new storage and mechanical garage building was being constructed to deter trespassers to the property and protect the building materials.

[25] The Claimant also had to hire Miller's Electrical Services to disconnect the electrical services to the old building and wire the new building, hire Installation Services for hardware installation and hire Touch Control Ltd. to reinstall the damaged wires and cameras.

[26] Mr. Shears further avers that the Defendants' Vehicle caused damage to a 2008 Pontiac, which was owned by a tenant who lived in the apartment complex next door who the Claimant allowed to park on its premises from time to time. Additionally, the Claimant's Gulf Cart sustained damage as a result of the Defendants' negligence.

[27] The Claimant had to replace several of its tools and safety materials, including a new fire extinguisher from GG Fire & Safety Services along with some of the construction materials and a wet/dry vacuum.

[28] The Claimant seeks compensation to purchase a floor jack and more tools.

[29] The Claimant avers that its mechanic was unable to carry out his duties of servicing vehicles for a two (2) month period and seeks to recoup this economic loss.

Legal Analysis

[30] The claim against the Second Defendant alleges negligence which caused loss and damage as a result of the Second Defendant's failure to drive with due care and attention, failure to keep any or any proper lookout, driving at an excessive speed or too fast in the circumstances, failure to steer and/or adequately control the Vehicle to avoid driving off the road colliding into the Claimant's business, failure to keep the truck in a safe and road worthy condition and driving a defective Vehicle.

[31] The claim against the First Defendant alleges negligence through vicarious liability as he failed to keep the Vehicle in a safe and roadworthy condition, failed to ensure the brakes of the Vehicle were in good repair and working condition and caused the Second Defendant to drive the Vehicle in an unsafe, defective condition while the brakes of the truck were not in good repair and working condition, while the Second Defendant acted as the employee, servant and/or agent.

[32] In support of the Claimant's claim, it relies on the Report which names Alfredo Richards (the Second Defendant) as being charged with Sections 46 and 8 (1) & (2) of the Act and Anthony Stubbs (the First Defendant) as being charged with permitting Alfredo Richards to drive an uninsured vehicle contrary to Section 8 (1) & (2) of the Act.

[33] In the Bahamian cases of **Cheerene Green v Arsene Dieucste and another [2024] 1 BHS J. No. 137** and **Joseph McCoy v Zharvargo Archer and another [2024] 1 BHS J. No. 120**, the Bahamian Supreme Court considered a Royal Bahamas Police Force Road Accident Report's finding of liability pursuant to Section 46 of the Act supportive towards a claim that there was a breach of the common law duty of care a driver has to other road users.

[34] That a driver has a general duty of care to other drivers and road users is seen in the Bahamian case **Curry v. Flowers [2005] 5 BHS J. No. 149** and the U.K. House of Lords case **Page v Smith [1995] 2 ALL ER 736**.

- [35] While not disputed, I am satisfied that the loss and damage incurred by the Claimant resulted from the Second Defendant's negligent driving of the Vehicle which crashed onto the Claimant's property. The negligent driving of the Second Defendant being a breach of his duty to drive with due care and attention which caused the Claimant's loss and damage for which the Claimant is entitled compensation by way of damages.
- [36] Moreover, due to the reckless driving of the Second Defendant and the size of the Vehicle, it was foreseeable that the Claimant's property would sustain damage from the Vehicle crashing into it in a reckless manner.
- [37] Usually, an award of damages would be divided into general damages and special damages; general damages encompassing physical injury sustained by a victim. In the instant case, thankfully, there were no physical injuries inflicted on the Claimant's employees or agents because of the Second Defendant's negligent driving. This leaves only the question of quantum with respect to special damages.
- [38] Special damages, which are sought by the Claimant, encompass out-of-pocket expenses and loss of earnings and must be specifically proved in the pleadings. The special damages the Claimant seeks are set out in its Claim and consists of work that had to be undertaken to repair and replace the mechanic and storage building which was destroyed by the Vehicle, supplies for the constructions and cleaning, the hiring of security to protect the opened premises, replacement of tools and equipment and loss of income.
- [39] By the Shears Affidavit, the Claimant provides photographs of the damages sustained in addition to receipts evidencing money spent to facilitate the repairs. The allowance below is based on my review of the Shears Affidavit and my satisfaction with the work done and/or money spent.

Special Damage Incurred	Amount Sought	Amount Allowed
i. Crane Truck	\$1400.00	\$1400.00
ii. Terranova Construction Company	\$43,102.15	\$40,408.66
iii. Fence replacement	\$1,822.44	\$1,822.44
iv. Task Force Security Services Ltd.	\$540.00	\$540.00
v. Touch Control Ltd.	\$1,632.50	\$1,632.50
vi. Installation Services	\$1,567.00	\$1,567.00
vii. Miller's Electrical Services	\$4,101.00	\$4,101.00
viii. Damage to 2008 Pontiac	\$2,800.00	\$2,800.00
ix. Gulf Cart repairs	\$1,983.71	\$1,983.71
x. Fire Extinguisher	\$126.28	\$126.28
xi. Construction materials & vacuum	\$338.75	\$110.82
xii. Loss of Income (Brendt Williams)	\$6,400.00	\$6,400.00
xiii. Floor Jack	\$294.00	\$294.00
xiv. Tools	\$850.00	\$850.00

Total

\$66,957.83

\$64,036.41

[40] In view of the foregoing, special damages are awarded to the Claimant in the amount of \$64,036.41.

[41] This leaves the issue of the apportionment of liability as well as interest on the amount awarded to be determined.

Vicarious Liability

[42] In **Cheerene Green v Arsene Dieucste and another [2024] 1 BHS J. No. 137**, Winder CJ considered his decision in **Sands Sr. (father of the deceased Lance H. Sands Jr.) and others v. Evelyn and another [2019] 1 BHS J. No. 19** where the principle of vicarious liability in road traffic cases was discussed. At para. 64 Winder CJ stated,

“[64.] Turning next to the issue of whether Bowe was performing duties for or acting on behalf of the Third Defendant at the time of the accident, in *Sands Sr. (father of the deceased Lance H. Sands Jr.) and others v. Evelyn and another [2019] 1 BHS J. No. 19*, the Court discussed the principles of vicarious liability in road traffic cases. At para [4], the Court stated:

As a general rule, a person will be vicariously liable only where the tortfeasor is his agent acting in the course of the employment. Likewise, the vehicle owner is liable only where the driver was driving for some purpose of the owner.”

[43] The Report does not state a time when the accident occurred. However, the undisputed evidence of the Claimant is that the accident occurred sometime around 12 noon. If the Vehicle was being driven by the Second Defendant in the nighttime there could be some doubt as to whether the Vehicle was being driven in the course of employment. Given the time of the accident and the Report’s finding that the First Defendant permitted the Second Defendant to drive the Vehicle uninsured, I am satisfied that the Second Defendant was driving the Vehicle in the course of his employment with the First Defendant, who I also find liable for the accident.

Interest and Costs

[44] **Section 3 of the Civil Procedure (Award of Interest) Act, Ch. 80** vests the Court with the discretion to award pre-judgment and/or post judgment interest, at such rate as it thinks fit, on any part of the debt or damages or all of it.

[45] In the instant case, the Claim simply asks for interest pursuant to the Civil Procedure (Award of Interest) Act 1992. Accordingly, post judgment interest is awarded at the statutory rate of 6.25%.

[46] Costs are awarded to the Claimant in the fixed amount of \$3,500.00.

Dated this 18th day of March 2026


Akeira Martin
Assistant Registrar

