IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2020/CLE//gen/01041

B E T W E E N

TYRONE WILSON

Claimant

AND

HOLLY VICTORIA SMITH

Defendant

Before:	**The Honorable Madam Justice Carla Card-Stubbs**
Appearances:	**Mr. Roger Minnis, Counsel for the Claimant**
	Ms. Holly V. Smith, Defendant, Pro se
Hearing Dates:	**October 17, 2023 and March 21, 2024**

Whether Defendant is liable in Negligence for rear-end vehicle collision – whether Claimant is entitled to damages sought – Whether accident so minor as to negate a claim in damages – Burden of proof on Claimant to prove breach of duty, loss and damage.

This matter concerns a suit for damages as a result of a vehicular collision. Mr. Wilson claims that Ms. Smith caused the accident by her negligence and that, as a result, he suffered loss and damage. Ms. Smith denies that she was negligent and contests the extent of the injury and loss contended for by Mr. Wilson.

HELD: A driver owes a duty of care to other road users and must exercise the standard of a reasonably competent and careful driver. He must drive as a driver of skill, experience and care, who is sound in mind and limb and who makes no errors of judgment. In this case, the Defendant was negligent and caused the accident. The Claimant's injuries were caused by the collision.

A Claimant has to specially prove the items claimed as special damages and must give evidence of the loss claimed under general damages. In this case, the Claimant could only recover limited special damages and no general damages.

JUDGMENT

CARD-STUBBS, J

INTRODUCTION

[1.] This matter concerns a suit for damages as a result of a vehicular collision. The Claimant, Mr. Wilson, claims that the Defendant, Ms. Smith, caused the accident by her negligence and that, as a result, he suffered loss and damage. Ms. Smith denies that she was negligent and contests the extent of the injury and loss contended for by Mr. Wilson.

[2.] For the reasons that follow, I determine that Ms. Smith was negligent and caused the accident. I also find Mr. Wilson's entitlement is limited to the award of damages reflected in this Court's order.

BACKGROUND

[3.] On October 20, 2020, the Claimant, Mr. Tyrone Wilson, brought an action against the Defendant, Ms. Holly Victoria Smith, by filing a Writ of Summons and Statement of Claim.

[4.] Mr. Wilson's case is that on December 22, 2019, while he was stationary in a rented vehicle at the drive through of McDonald's, West Bay St., it was struck from behind by a blue 2006 Cherokee Jeep which was being driven by Ms. Smith. His claim is that the collision was caused by Ms. Smith's negligence.

[5.] Mr. Wilson's pleaded case is that he sustained injuries and suffered loss and damage. In the specially-endorsed Writ of Summons, the Claimant pleaded injuries including shock and severe pain, lower back pain, and lumbar paraspinal muscle spasm. He also claimed special damages for doctor visits, massage therapy, medicine, travel expense, and loss of income. Mr. Wilson sought general damages pleaded as (i) Pain, suffering and loss of amenity and (ii) Handicap on the labour market.

[6.] In answer to the claim, Ms. Smith filed a Memorandum of Appearance and a Notice of Appearance on December 9, 2020. Her Defence was filed December 21, 2020.

[7.] Admitting the collision, the Defence pleads that the collision took place at "the University Drive location of the McDonald's restaurant chain." The Defence sets out the following at paragraph 2:

> The Defendant avers, in relation to paragraph one (1) of the Plaintiff's Statement of claim, that the fender of her vehicle very slightly brushed against the bumper of the vehicle which the Plaintiff operated at the University Drive location of the McDonald's restaurant chain.

[8.] Ms. Smith denied negligence in her Defence and disputed the extent of the Claimant's alleged injury and loss.

[9.] Mr. Wilson filed a Reply on November 1, 2021 reiterating his case and joined issue with the Defendant on her Defence, "save insofar, as the same consists of admissions".

[10.] Both parties filed witness statements and gave *viva voce* evidence at the trial.

PARTIES' CASES

[11.] Mr. Wilson's evidence was that he experienced lower back pain after the collision, sought treatment, and later experienced difficulty working and fishing as before.

[12.] The Defendant's evidence was that she accidentally hit the back of the Claimant's vehicle, that it was not intentional, the contact was minor and that the Claimant made no complaint of pain or injury at the scene.

ISSUES

[13.] The central issues to be determined in this instance are:

1. Whether Ms. Smith was negligent – whether she owed Mr. Wilson a duty of care, and if so whether she breached that duty of care resulting in loss and injury and
2. What damages, if any, have been proved and are recoverable.

LAW AND ANALYSIS

[14.] Atkins Court Forms (Published by LNUK) at Volumes 31(2)(3), "Personal Injury", provides the following synopsis on the matter of liability in negligence, at Paragraph A.1:

> The claimant has an action in negligence where they have suffered damage (which is not too remote) as a result of the defendant's failure to perform, or their negligent performance of, any such duty which is owed by them to the claimant with respect to damage of the kind in question. Accordingly, where a claimant is proceeding with a claim in negligence, they must plead and prove that:
>
> 1. the claimant was owed a material duty of care by the defendant;
> 2. the defendant was in breach of that duty; and
> 3. the claimant suffered loss and damage in consequence of that breach which was within the scope of the duty in question.

[15.] In this case, Mr. Wilson must prove that Ms. Smith owed him a duty of care, that she breached that duty and that, as a result, he suffered loss and damage for which damages are recoverable.

Issue 1a. Duty of care and Breach of duty

[16.] Counsel for the Claimant relied solely on the case of **Donoghue v Stevenson [1932] AC 562,** the *locus classicus* in the area of negligence. That case saw the pronouncement of the "neighbourhood principle" and the existence of a duty of care, particularly where a person's acts or omissions cause foreseeable harm to another, thereby giving rise to liability in negligence.

[17.] A driver owes a duty of care to other road users and must exercise the standard of a reasonably competent and careful driver. He must drive as a driver of skill, experience and care, who is sound in mind and limb and who makes no errors of judgment.

[18.] If there is a collision and one vehicle strikes the rear of another, the ordinary inference, in the absence of a sufficient explanation, is that the driver of the vehicle that struck the other vehicle from behind, made some error in judgment and either failed to keep a proper lookout, and/or maintain proper distance, and/or or keep the vehicle under proper control. Whether negligence is established remains a question of fact to be determined by applying ordinary principles of the law of negligence to the evidence.

[19.] In this case, there is no dispute that the vehicle driven by Ms. Smith struck the rear of the vehicle driven by Mr. Wilson. While there is conflicting evidence about which McDonald's drive-through was the actual venue, there is no dispute that a collision took place at a McDonald's drive through and that, at that venue, the police did not arrive to investigate the accident and that the parties pulled their cars to the side and away from the area of impact and then had a conversation.

[20.] Mr. Wilson's evidence of the moment of impact, by way of his witness statement, sworn on February 9, 2023 and filed on February 10, 2023, is:

> On Sunday, the 22nd day of December A.D. 2019 around 6:00 a.m. whilst waiting on the drive-thru at McDonald's for my order. Whilst waiting for my breakfast, my vehicle was struck from behind by a Green Cherokee Jeep.
>
> At the time of the accident around, I was driving a rental car and was in park because the food was taking long. I felt when a bump at the back of the vehicle and simultaneously I fell backwards in my seat.
>
> I then got out of the vehicle and enquired of the jeep driver what happened. At that time, I also noticed that one of the rear signal lights was destroyed and the rear of the vehicle was mashed in.

Mr. Wilson maintained this evidence at the hearing.

[21.] Ms. Smith's response by way of witness statement, sworn on March 20, 2023 and filed on March 31, 2023, is

> 1. On the 22nd December, 2019 while waiting on the drive-through lane at Mcdonald's Restaurant in Oakes' Field I started to slide forward to the pick up window after paying for my food at the first window.
>
> 2. While pulling up I pulled too far up and accidentally hit the back of a vehicle which I now know was driven by the Plaintiff.

[22.] On cross-examination by Counsel for Mr. Wilson, Ms. Smith sought to explain what happened (pages 31 – 32 Transcript):

> Q. What do you mean by slide?
>
> A. I had my foot on the brake, and I started to like it loose a little, so I could slide up to the window.

Q. I see. So you didn't use -- what you are trying to say, you just used the momentum of the car itself?

A. Right.

Q. And then you said while -- in the second paragraph you said: "While pulling up I pulled too far up and accidently hit the back of a vehicle which I now know to be driven by the plaintiff." What do you mean by that, 'pull too far up?

A. I was -- okay. When I got my receipt I started to -- I don't know if you ever been to Oaks Field drivethrough at McDonalds, University Drive?

Q. I am very familiar with it?

A. So it is a small area between to drive to the next drivethrough. And I took my foot off the brake a little and I started to like slide my car enough so that I could reach there. But I didn't – at that time I didn't apply the brake.

Q. I know. That was in the first paragraph, the slide. And the second one you are saying pulled up. It is different from slide, isn't it? As opposed to slide, you are pulling up now. You are not sliding anymore, you are pulling up. That is what you are saying.

A. To me that's the same.

Q. It is?

A. Yes.

Q. Okay then. And you said that you pulled up too far and accidently hit the back. What do you mean by accidently hit the back?

A. It wasn't intentionally, it was an accident.

Q. But you hit it?

A. Yes.

[23.] The Defendant acknowledged that she struck the rear of the Claimant's vehicle. Ms. Smith's account indicates that her failure to maintain control of her vehicle resulted in the collision: "I pulled too far up and accidentally hit the back of a vehicle." The absence of intent is not determinative in this matter. Ms. Smith was obligated to exercise care and control over

her vehicle to prevent injury or harm to Mr. Wilson and others present. She owed Mr. Wilson a duty to operate her Jeep with reasonable care, which included remaining attentive while proceeding through the McDonald's drive-through and ensuring that her vehicle did not make contact with the Claimant's rental car. Her actions did not meet the standard expected of a reasonably competent and careful driver.

[24.] Regarding the issue of duty of care and its breach, I rule in favor of the Claimant, Mr. Wilson.

Causation and Injury

[25.] Mr. Wilson's evidence, both in his witness statement and at trial, was that he experienced lower back pain after the collision, sought treatment, and later experienced difficulty working and fishing as before.

[26.] Ms. Smith's evidence was that the contact was minor and that Mr. Wilson made no complaint of pain or injury at the scene of the collision. Her evidence was also that she did not hear from Mr. Wilson again until she was served with the Writ of Summons in this action.

[27.] By his witness statement, Mr. Wilson's evidence is that he fell backwards in his seat on impact, then moments later "started to feel a slight pain in my lower back." His evidence is that when he went to the police station to report the incident, the pain became more severe. He went to a walk-in clinic and was seen by a doctor: "X-rays were taken then I was given an injection for the pain and some medications." His evidence is that after spending a few more days in Nassau, he returned to Eleuthera "with a lot of pain" and that he needed assistance to walk. He went to a doctor on the island and got more medication for the pain.

[28.] In relation to the pain and other losses suffered, Mr. Wilson's evidence was:

> I returned to Nassau on the 6th day of January A.D. 2022 to see the doctor again. They did x-rays and told me that I had bad back spasms. I was again given treatment and medication for the pain.
>
> Since the accident I have been unable to fish like I use to and I cannot lift any heavy object and have a very difficult time getting back up after bending. My sex life has also been greatly affected as well by the injury.
>
> I have also been to the clinic on the Island and was given Voltaren shots and pills but the pain would only subside for a while and return again.

> I also had a massage therapist massage my back with the hopes of getting rid of the pain somehow.
>
> Because of the expenses incurred in visiting the doctor in Nassau and the fact that I can no longer fish for a living. I now have to resort to any traditional means to alleviate the pain and by taking extra strength Panadol and forcing myself to sleep when the pain becomes unbearable.

[29.] On cross-examination, Ms. Smith suggested that Mr. Wilson never complained of pain at the scene of the accident and she challenged his claims of being in pain. The suggestion was that the medical report that he had produced showed that he had a pre-existing condition. Mr. Wilson reiterated that he was in pain. (pages 15 to 16 of Transcript):

> Q. And during that time you still were not able to work?
> A. I wasn't working when it first happened, because I was in plenty pain.
> Q. And that was in 2019.
> A. Yes, ma'am.
> Q. So three years later, in January 6, 2022, you continued to have pain?
> A. I still have pain.
> Q. And at no time between 2019 to 2026, did you see a doctor in between?
> A. This ain't 2026.
> Q. I mean 2022. So you went back home to Eleuthera that day, in severe pain, and never return back until January 6, 2022, as your statement claims?
>
> ….
> Q. At no time in between did you seek any medical attention until the 6th of January, 2022, when you returned back for x-rays?
> A. No, ma'am. I was doing therapy. I was doing therapy and all.

[30.] The Defendant disputed whether any injury was caused. She argues that the Claimant made no complaint of pain at the scene of the collision. Her further argument is that, as I understand it, because the impact was light, the Claimant could not have suffered the sort of loss and injury claimed.

[31.] The Claimant did not challenge the suggestion that the collision was a minor one. His evidence is of limited damage to the rear of the rental vehicle that he was driving. I accept that, on a sliding scale, the collision, which is the subject of this dispute, is a minor-impact collision. In minor-impact collision cases, the Court is not bound to reject a claim for injury merely because the impact was slight. A Court may find that some pain or injury was caused if the evidence as a whole supports that conclusion. Notably, the absence of an immediate complaint of pain does not, of itself, preclude the possibility that the Claimant sustained the

injury alleged. The Court is entitled to consider the totality of the evidence, including the Claimant's account and the medical records, in determining causation.

[32.] Much ado was made by Ms. Smith as to whether Mr. Wilson made sufficient efforts to contact her or her insurance company since she had given him those details. Mr. Wilson explained that he could not reach her hence his recourse to the police and to his lawyer. I believe Mr. Wilson when he says that he could not reach Ms. Smith on the number provided to him. Ms. Smith did admit, under cross-examination, that the number provided to Mr. Wilson was of a phone that she had purchased as a Christmas gift for her daughter and which number was "registered under my daughter's name". In any event, his efforts made have no bearing on the culpability of the Defendant for causing the accident nor on the damages that flow from her breach of duty.

[33.] Upon review of the evidence, I find that it demonstrates a clear sequence: a rear-end collision occurred, resulting in a jolt to the Claimant's body, followed by the onset of pain soon thereafter. The Claimant promptly sought medical attention, purchased medication, and traveled for treatment. Unchallenged medical records establish that Mr. Wilson attended a Walk-In Clinic on the day of the accident, underwent an X-ray of the lumbar spine, and was prescribed pain relief. The medical records show clear findings consistent with the complaint of the Claimant.

[34.] The Defendant raised the possibility of a pre-existing condition but this was not substantiated. Moreover, even if a pre-existing condition had been present, this would not sever the chain of causation. While pre-existing conditions may, in some circumstances, influence the cause or nature of pain and injury, such factors were not shown to be determinative here. A pre-existing condition does not rule out the occurrence of injury, and in this instance, the Defendant must take her victim as she finds him.

[35.] I accept that the Claimant experienced lower back pain after the collision and sought medical attention as evidenced by the medical certificates, including those showing attendance at a clinic on December 22, 2019 and January 6, 2020.

Finding of Negligence

[36.] In conclusion on this issue, I find that the Defendant was negligent. There is no evidence displacing the ordinary inference of negligence. On the evidence before the Court, I find that the Defendant, Ms. Smith, failed to maintain sufficient control, lookout, or stopping distance in the drive-through queue.

[37.] I find that the Defendant caused the collision by her negligence. Specifically, I find that she was negligent for the reasons pleaded, namely: she failed to keep any or any proper lookout

for the presence of the Claimant, failed to apply brakes in time or at all to avoid the said collision and failed to stop, slow down, steer or otherwise control the motor car so as to avoid hitting the Claimant.

[38.] I am satisfied on a balance of probabilities that the collision caused at least some pain or discomfort for which it was reasonable for the Claimant to seek medical attention and medication.

Issue 2: Damages

[39.] I rely on the dictum of Lord Goddard in the House of Lords decision of **British Transport Commission v Gourley [1956] AC 185** for the general distinction between special and general damages. He opined at page 206 of that case that:

> In an action for personal injuries the damages are always divided into two main parts. First, there is what is referred to as special damage, which has to be *specially pleaded and proved*. This consists of out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. Secondly, there is general damage which the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future.

Special damages

[40.] The Claimant seeks items of special damages: specific pecuniary losses allegedly incurred as a result of the negligence of the Defendant. Special damages must be specifically pleaded. It is also a principle of law that such pecuniary losses must be specifically proven and shown to have been reasonably incurred as a consequence of the Defendant's negligence.

[41.] The Writ pleads (a) Doctor visits totaling $1,776.16, including massage therapy of $1350; (2) medicine totaling $131.95; (3) Travel expense of $90.00 and (4) Loss of income. In principle, the heads of claim for doctor's visits, medicine, and travel expense are recoverable as special damages if proved. In this case, Mr. Wilson must prove that each cost claimed was actually incurred; that each item was caused by the accident and was reasonable.

Doctor's visits, medicine, and travel expense

[42.] Regarding the doctor's visits (excluding massage therapy), I accept the Claimant's evidence that medical treatment was sought and received from healthcare professionals due to symptoms that developed following the collision.

[43.] I am satisfied on the evidence that the first doctor's visit took place after the collision and on the same day as the collision. I accept that Mr. Wilson attended the Walk In clinic instead of returning to Eleuthera, his island of abode, as previously scheduled. I am satisfied that the contemporaneous medical visit, and the follow up thereto, were made as a result of the injury suffered in the collision.

[44.] For the record, I note that Mr. Wilson's witness statement indicated that the follow-up visit occurred on January 6, 2022. This testimony was tested on cross-examination and subsequently clarified during re-examination, referencing the medical records that had been entered into evidence without objection. I am satisfied that the follow-up doctor's visit actually took place on January 6, 2020, and that the reference to "January 6, 2022" in the witness statement was a misstatement.

[45.] It is foreseeable, and is plainly reasonable, that a person who experiences pain after a traffic collision would seek medical advice. If, as in the evidence before me, the Claimant has produced a receipt, invoice, or other satisfactory record of payment, that item is proved. It is my determination that the sums paid for the doctor's visits on December 22, 2019, and January 6, 2020 is therefore recoverable.

Medicine

[46.] Regarding the claim for medicine, I accept that medication was purchased for pain relief or treatment of symptoms caused by the accident. Again, the Claimant has produced satisfactory records of payment, and that item is proved. Medicine is a foreseeable expense and is recoverable as a direct consequence of the injury. The pleaded sums are recoverable.

Massage therapy

[47.] The Writ includes a claim for massage therapy under the category of doctor visits. Mr. Wilson's witness statement indicates that he "had a massage therapist massage my back with the hopes of alleviating the pain." His oral testimony simply stated, "I was doing therapy. I was doing therapy and all." Although massage therapy is categorized as a "doctor's visit," there is no evidence provided to confirm whether it was recommended by a specialist as an appropriate

treatment for Mr. Wilson's complaint. Furthermore, no records of therapy attendance or receipts for services rendered have been submitted. There is also insufficient evidence to support that such therapy constituted a cost reasonably incurred.

[48.] I disallow the claim for massage therapy.

Travel Expenses

[49.] As it concerns travel expense, Mr. Wilson's evidence is that he incurred transportation costs in attending the doctor or obtaining medication. On the evidence, Mr. Wilson had to travel from Eleuthera to Nassau for follow-up care. In those circumstances, travel for treatment was a natural incident of obtaining care. The Claimant has produced satisfactory records of travel and payment. The expenditure is reasonable in amount and specifically proved. It is my determination that the figure pleaded is recoverable.

Loss of income

[50.] In the Writ, the Claimant pleaded loss of income "from December 2019 to date" of approximately $16,000.00. The Writ was filed on October 20, 2020.

[51.] The Claimant's pleaded case in the Writ is that he was a self-employed fisherman and part-time restaurant and bar assistant, and that he had not resumed work since the accident.

[52.] By his witness statement, filed on February 10, 2023 and more than 3 years after the accident, Mr. Wilson's evidence was:

> Since the accident I have been unable to fish like I use to and I cannot lift any heavy object and have a very difficult time getting back up after bending.

[53.] The court takes judicial notice of the pandemic that affected labour and economic activities during the ensuing period, that is, between the date of the accident and the date of the filing of the witness statement.

[54.] Mr. Wilson's initial evidence was that he was not able to work during the pandemic. He later testified that he was able to work "maybe one or two days". On cross-examination, Mr. Wilson also conceded that he was still able to fish and to work. Mr. Wilson's evidence was as follows (Transcript pages 18 to 20):

Q. During that time it was the pandemic. No one was able to work. Am I right?
THE COURT: Were you able to work during the pandemic?
THE WITNESS: Part-time. During the pandemic I could work part time, not every day.
BY THE DEFENDANT:
Q. Can I ask, did you work any time during the pandemic?
A. No, ma'am.
THE COURT: You did not work during the pandemic?
THE WITNESS: No, not like that. Only one or two days.
BY THE DEFENDANT:
Q. But you were able to work?
A. Yes, one or two days.
Q. Through the week. But in your statement you say that you were unable to work during the pandemic -- during that time.
A. I was in pain, I could not work.
Q. Not the next day?
A. I could not work at all around that time when the accident happened.
Q. So, from 2019 to January 6, 2022, you are saying you didn't work no day?
A. Yes, I work, but not every day.
Q. But you said -- you have the same statement?
A. Yes.
Q. "Since the accident I have been unable to fish like I use to." And you were not able to lift heavy object or bend?
A. Yes, ma'am.
Q. But you still --
A. I could not lift the cooler anymore, because of the weight.
Q. Okay.

[55.] Mr. Wilson explained how he fishes and confirmed that he had in fact gone fishing since the accident. (Transcript pages 25 to 26):

Q. I wanted to ask him once he go fishing how did he get the fish out to the container?
A. I let someone lift it. You always have someone on the dock. I don't do no lifting.
Q. And I wanted to ask him also how does he fish?
A. Compressors, sometimes I use a net.
Q. And someone on the boat would pull it up?
A. With the compressor I stay in the boat and the diver use the equipment, and I just keeping up with the boat. I don't dive.
Q. And the fish gets in the container – you have to take it and put it into the container?

A. No.
Q. The compressor rings it into the container?
A. He just come with the spear and he just throw them in the boat.
Q. So, you do no fishing at all?
A. Yes, I fish.
Q. I meaning fish as in pull the fish into the boat?
A. No.
THE COURT: What is your answer? You have to answer orally.
THE WITNESS: I answer, ma'am.
THE COURT: What's the answer? I didn't hear.
THE WITNESS: I just keep up the boat. I is the captain so I just drive the boat. And if he dive with a compressor, he just dive with spears.
Q. Okay.

THE DEFENDANT: I could ask him another question?
THE COURT: Go ahead.
BY THE DEFENDANT:
Q. So if you are the driver of the boat, why would you have -- you said you no longer go out fishing, but you can drive the boat?
A. Yes, I can drive the boat. I stand up and drive the boat.
Q. And you said at that time there are multiple people in the boat whilst you fish?
A. Only me and the diver. Only me and the diver.
Q. So you are still the driver of the boat?
A. Yes, ma'am.
Q. So you can go out to fish?
A. I does go out.
THE DEFENDANT: That's all I wanted to ask him.

[56.] Mr. Wilson's evidence was also that, prior to the accident, he worked "maybe every day". His evidence also was that he had been fishing only days before the trial ("last week Monday") and that when he was not fishing "I go into the bar and restaurant with my wife, assisting my wife."

[57.] A Claimant in negligence must prove not only breach and injury, but also the particular loss claimed. Loss of earnings is not presumed. It must be affirmatively proved as a matter of fact and causation. The Claimant must show that the accident caused an actual loss of earnings, not merely that an accident occurred and that some symptoms followed. A Claimant must establish that the injuries caused by the tort prevented him from working during the relevant period. In this case, Mr. Wilson must prove that the specific financial loss claimed was caused by the injury in question.

[58.] Mr. Wilson accepted in cross-examination that he still worked. His evidence was: "Yes, I work, but not every day." He also said that he still went fishing "like two to three times out of the week, if the weather is good".

[59.] That evidence is inconsistent with the pleaded claim that he had not resumed work since the accident. There is also no evidence that the Claimant did not work between December 2019 and October 2020. Mr. Wilson's evidence was "I wasn't working when it first happened because I was in plenty pain." There is no clarification of what that period was.

[60.] What is clear from the evidence, is that the Claimant resumed fishing in some form. Mr. Wilson's evidence is that on the boat he was the captain, that he mainly drove the boat, and that he did not do the diving or much of the lifting. It is unclear to me whether that was to be evidence of limitation but, to my mind, it is evidence that the nature of the pain and injury claimed by Mr. Wilson did not permanently, or at all, affect his fishing activity since the evidence is that he does not have to lift or pull or physically handle catches of fish although he sought to claim that he could no longer lift the cooler.

[61.] What is also clear is that although Mr. Wilson claimed to fish "maybe every day" while the weather was good, during the pandemic he fished for maybe two days per week.

[62.] I am not satisfied that Mr. Wilson had, for any prolonged period, not been able to fish. The evidence also shows that subsequent to the accident, Mr. Wilson fished about 2 days per week during the pandemic. The suggestion that "no one was able to work during the pandemic" was not met by a rebuttal but merely by his response that he was able to fish twice per week.

[63.] Mr. Wilson's case seems to be that he cannot go every day and can fish "two to three times out of the week, if the weather is good". I am not satisfied that a reduction in fishing was caused by an injury as a result of the accident. Mr. Wilson has not proven, on a balance of probabilities, that the nature of his injury prevented him from fishing or working. Mr. Wilson's own evidence is that he "drives the boat" as captain and does not have to physically haul the fish. He does not do the lifting or diving.

[64.] What is conclusive on this item is that even if the evidence were accepted at its highest, it does not by itself prove an actual monetary loss. While I accept that the Claimant says he fished less often after the accident, the Claimant must prove that this was as a result of the injury suffered and not due to another cause, such as, for example, the pandemic.

[65.] Further, reduced activity does not automatically establish compensable income loss. The court must be able to identify, with reasonable confidence, that earnings were in fact lost and in what amount. This is particularly so in a case such as this where the Claimant's evidence is

that when he is not fishing, he takes on other work – his evidence is that he works in a restaurant with this wife. Mr. Wilson has performed, and can perform, other work. He is also described as a part-time restaurant and bar assistant. His evidence is that if he does not go fishing, he assists his wife in the restaurant. This evidence was given in the context of "other work".

[66.] Mr. Wilson's evidence is inconsistent with the pleaded assertion that he had not resumed work since the accident. His acceptance that he still worked, albeit "not every day," significantly undermines the pleaded case of total inability to work.

[67.] Importantly, the evidence presented is deficient. There is no documentation or indication regarding Mr. Wilson's earnings before or after the accident. Mr. Wilson's case lacks supporting documents, corroborative testimony, or substantiation concerning the nature of his previous or current income, thereby failing to establish any loss of earnings. There is no evidence corroborating a period of absence from work or a reduction in income.

[68.] There is no proof or explanation of earnings which would serve as evidence of how much Mr. Wilson earned on a periodic basis nor is there any indication of how the figure of $16,000.00 was calculated. There is no evidence showing the Claimant's pre-accident average earnings as a fisherman or restaurant/bar assistant, or his post-accident reduced earnings.

[69.] A Claimant must affirmatively prove actual pecuniary loss. Mr. Wilson bears the burden of proving a loss of income. He has not met that burden. I therefore find that the Claimant has failed to prove the claim for loss of income.

[70.] I disallow the claim for loss of income.

General damages

[71.] Mr. Wilson seeks an award of general damages under the following heads: (1) Pain and suffering and loss of amenity and (2) Handicap in the labour market.

Handicap on the labour market

[72.] Mr. Wilson 's evidence is that he has resumed fishing and that he assists in the restaurant when not fishing. This does not support a claim for a handicap on the labour market. There is no evidence before me that would support a finding that Mr. Wilson has suffered, or is likely in the future to suffer, difficulty in obtaining or retaining employment. In any event, there is no formal expert medical report quantifying the extent, duration, and consequences of any injury that would justify a compensatory award under this head.

[73.] I find that Mr. Wilson, has not, on the evidence, proven a handicap on the labour market. In those circumstances, I am not satisfied that an award of general damages ought to take into account an amount attributable to this head of damages.

Pain and suffering and loss of amenity

[74.] I accept that Mr. Wilson alleges pain and limitations after the accident. I am satisfied, on Mr. Wilson's evidence, corroborated by the medical evidence, that he suffered pain immediately after the injury and sometime thereafter. His cogent evidence, supported by the documentary prescriptions for pain killers, is accepted. However, I am not satisfied in this case that Mr. Wilson has proven, on a balance of probability, that he (1) suffers ongoing pain and (2) that any ongoing pain is attributable to the collision of December 2019. His evidence is that he could not work because of pain. The assertion that he could not work has been proven to be inaccurate. That inaccuracy also serves to discredit his evidence of continuing pain.

[75.] Further, the evidence indicates that Mr. Wilson manages his pain with extra-strength Panadol, rest, and massage therapy. However, there is no information regarding the specifics of the massage therapy or the duration over which it was employed. While the use of over-the-counter medications such as extra-strength Panadol for pain management is common, it remains Mr. Wilson's responsibility to demonstrate that the pain he claims persists years after a minor-impact collision is indeed a result of that collision. In this instance, I am not persuaded that Mr. Wilson has established, on a balance of probabilities, that he experiences ongoing pain or that any such pain can be attributed to the December 22, 2019 collision. Furthermore, there is an absence of medical evidence to support Mr. Wilson's assertions or to provide a relevant prognosis.

[76.] Mr. Wilson's other assertion that there has been "loss of sex life" was unsupported and not clarified.

[77.] Under this head, there is no formal expert medical report quantifying the extent, duration, and consequences of his injury that would justify a compensatory award for pain and suffering and loss of amenity.

[78.] In the circumstances the award for pain and suffering will be limited to the period of December 2019 to February 2020, accepting that the pain did not disappear on his last doctor's visit. Given the nature of the evidence, I find it to merit a minimal award for the short time proven.

[79.] I make an award of $3000 in total for general damages.

CONCLUSION

[80.] The Claimant's stationary vehicle was struck from behind by the Defendant's vehicle. A driver owes other road users a duty of care of careful driving which includes maintaining proper observation of the road ahead, keeping a sufficient separation distance, and having one's vehicle under adequate control to respond to traffic conditions. I find that the Defendant was negligent in allowing her vehicle to strike the rear of the Claimant's vehicle.

[81.] I further find that the Claimant's injuries were caused by the collision.

[82.] The Claimant is entitled to recover his proved special damages for two doctor's visits, medicine, and travel expense. I therefore allow the claim for doctor's visits in the sum of $426.16, medicine in the sum of $131.95; and travel expense in the sum of $90 respectively.

[83.] The claims for massage therapy, loss of income are dismissed.

[84.] I allow an award of $3000 as general damages.

COSTS

[85.] The Claimant has prevailed on the issue of liability and I have found that he is entitled to a limited award of damages. Taking into account the provisions of Part 71, CPR and in particular the provisions of Part 71, Rule 71.6, I find no reason to depart from the general rule that the unsuccessful party should pay the costs of the successful party. Therefore, in this matter, the Defendant shall pay the Claimant's costs, to be summarily assessed by a Registrar, if not agreed.

ORDER

[86.] The ORDER and directions of this Court are as follows.

1. Judgment is entered for the Claimant on liability in negligence.
2. The Defendant shall pay the Claimant's special damages as follows:
    I. Doctor's Visits: $426.16
    II. Medicine: $131.95;
    III. Travel Expense: $90.00.

3. The Claimant's claims for massage therapy and loss of income are dismissed.
4. The Defendant shall pay the sum of $3000 as an award of general damages.
5. Judgment is entered for the Claimant in the sum of $3647.16.
6. Interest continuing on the said sum of $3647.16 at the statutory rate of 6.25 per centum per annum from the date of judgment to the date of payment; and
7. The Defendant shall pay the Claimant's costs, to be summarily assessed by a Registrar, if not agreed.

Dated this 19th day of May, 2026

Carla D. Card-Stubbs, J
Justice