

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION REGISTRY

CAUSE NO: 212 OF 2018

BETWEEN:



PHYLLIS MAE MOXAM

PLAINTIFF

AND



GEORGE ALLAN MOXAM

DEFENDANT



WRIT OF SUMMONS

TO: George Allan Moxam
103 Thistle Lane, Apartment No. 100, West Bay, Grand Cayman

Name and address of Defendant's motor vehicle insurer:

Insurance Company of the West Indies (Cayman) Limited
150 Smith Road
P.O. Box 461, Grand Cayman KY1-1106

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of 27 Viers Close, George Town, Grand Cayman in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you, (or where this Writ is served on you out of the jurisdiction pursuant to an Order of the Court, within 28 days) counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein any intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 2nd day of November 2018.

NOTE this Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of original issuance unless renewed by order of the Court.

IMPORTANT

Directions for the Acknowledgement of service are given with the accompanying form

BETWEEN:

PHYLLIS MAE MOXAM

PLAINTIFF

AND:

GEORGE ALLAN MOXAM

DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff is Caymanian, resident in George Town, born 23 March 1947, and is employed as an Assistant Manager at Jacques Scott Wine & Spirits on North Sound Road, George Town, and was at all material times the owner and operator of a Toyota Rav-4 motor vehicle bearing registration no. 161647 (hereinafter "the Plaintiff's vehicle").
2. The Defendant is Caymanian, and was at all material times the operator of a Chevrolet Vectra motor vehicle registered to Nealy Maddox Moxam and bearing registration no. 106651 (hereinafter "the Defendant's vehicle").
3. The Plaintiff's claim arises from the use of a motor vehicle upon a road by the Defendant, required to be insured pursuant to the Motor Vehicle Insurance (Third Party Risks) Law (2012 Revision). The insurer of the Defendant's motor vehicle at all material times was the Insurance Company of the West Indies (Cayman) Limited and notice of these proceedings will be given to the said insurer in accordance with the provisions of s.15(2)(b) of the said Law.
4. On 10 December 2015 at or about 12:23 p.m. the Plaintiff was operating the Plaintiff's vehicle southbound on West Bay Road, George Town, in the vicinity of Burger King, proceeding in the direction of George Town, when suddenly and without warning, the Defendant operating the Defendant's vehicle northbound on West Bay Road, attempted a right hand turn from the centre lane of West Bay Road into Burger King across the path of the Plaintiff's oncoming vehicle, resulting in a collision between the two vehicles.

Particulars of negligence

5. The Plaintiff states that the aforesaid accident occurred as the result of the negligence of the Defendant in the operation of the Defendant's vehicle, the particulars of which negligence are as follows:
 - (a) He failed to keep a proper or any look out before attempting to a right hand turn across the path of the Plaintiff's vehicle into the entrance of Burger King;
 - (b) He failed to yield the right of way to the Plaintiff's vehicle which was lawfully proceeding on West Bay Road Road and had the right of way;

- (c) He failed to apply his brakes promptly, in time or at all; and
 - (d) He was operating the Defendant's vehicle in a careless manner.
6. In the circumstances where the Plaintiff's vehicle which had the right of way and the turned across its path, the Plaintiff pleads and relies on the doctrine of *res ipsa loquitur* as to the negligence of the Defendant in the operation of the Defendant's vehicle.

Particulars of injury

7. The Plaintiff states that as the result of the negligence of the Defendant and the collision as aforesaid the Plaintiff sustained serious personal injuries, the particulars of which are set out below.
8. The Plaintiff blacked out briefly immediately following the accident, and had to be taken by ambulance to the Emergency Department of the George Town Hospital for radiological examination and treatment.
9. The Plaintiff sustained soft tissue injuries to her neck, shoulders, right upper limb and lower back and under treatment by Dr Steve Tomlinson was diagnosed as having sustained a whiplash type injury to her neck, and lower back muscles, and a strained shoulder, and was prescribed muscle relaxants and anti-inflammatories, and referred for physiotherapy.
10. The Plaintiff underwent extended physiotherapy treatment at RVC Rehab Services from 9 January 2016 through to 29 June 2017 with little long term improvement. The Plaintiff underwent a MRI of her cervical spine on 5 July 2017 which disclosed inter alia disc herniation of the disc between C6/C7 and compression of the nerve.
11. The Plaintiff is currently under the care of Dr Frank Smith, Orthopaedic Surgeon, and Dr Caroline Quartly, Physical Medicine and Rehabilitation Specialist, and receiving further physiotherapy from RVC Rehab Services.
12. The Plaintiff has produced to the Defendant's insurer her medical reports and medical records documenting her injuries and treatment as set out above, as those reports and records have become available to her.
13. As a result of her injuries the Plaintiff has and continues to experience constant back and shoulder pain which she treats with Aleve and prescription pain medications, and a compression sleeve on her left arm and kinesiology tape on her left upper arm and shoulder applied by her physiotherapist, Tenson Edmonds.
14. The Plaintiff has suffered a serious loss of amenities and her quality of and enjoyment of life has been reduced with substantial limitation of her recreational, social and lifestyle activities including her former enjoyment of daily walking.

Special damages

15. The Plaintiff has incurred out of pocket expenses and insurance co-pays due for her medical treatment. Full particulars of these special damages including any subrogated claim advanced on behalf of the Plaintiff's health insurer, Aetna, will be provided to the Defendant prior to trial.

Interest

16. The Plaintiff pleads and relies on s.34 of the Judicature Law (2007 Revision) and Rules 4 and 5 of the Judgment Debts (Rates of Interest) Rules 1995 as varied by the Judgment Debts (Rates of Interest) Rules 2006 and 2008, promulgated by the Rules Committee pursuant to s.34 of the said Law, and claims interest on her general and special damages and costs as follows:
- (a) Pre-judgment interest on her general damages awarded at the rate of 2% per annum from the date of service of the Writ of Summon herein, and
 - (b) Pre-judgment interest on her special damages from the date of the subject accident, at half the currently prescribed rate of 2 $\frac{3}{8}$ % per annum or under the Judgment Debts (Rates of Interest) Rules 1995;
 - (c) Post-judgment interest upon the principal amount of the judgment with effect from the date of service of the judgment at the rate of 2 $\frac{3}{8}$ % per annum or such other rate then prevailing in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest) Rules; and
 - (d) Interest on all fixed or assessed costs and orders running from the date of service of the orders or certificates of taxation respectively and at the rate of 2 $\frac{3}{8}$ % per annum or such other rate prevailing in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest).

THE PLAINTIFF THEREFORE CLAIMS:

- (a) General damages for pain and suffering and loss of amenities to be assessed;
- (b) Special damages as pleaded above;
- (c) Pre-judgment and post-judgment interest as more specifically pleaded above;
- (d) Her costs of this action; and
- (e) Such further and other relief as to this Honourable Court may seem just.

DATED at Grand Cayman this 2nd day of November 2018.

Hampson - Co.

Hampson and Company
Attorneys for the Plaintiff

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM are filed by Hampson and Company, attorneys for the Plaintiff, whose address for service is that of her said attorneys, at Citrus Grove, 5th Floor, Goring Avenue, George Town, P.O. Box 698, Grand Cayman KY1-1107, Cayman Islands.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
SION REGISTRY



CAUSE NO: G212 OF 2018

PHYLLIS MAE MOXAM

PLAINTIFF

GEORGE ALLAN MOXAM

DEFENDANT

In Chambers
Before: Madam Justice Carter
On the papers: 25 January 2024

ORDER SUBSTITUTING DEFENDANT

UPON THE PLAINTIFF'S Summons filed 24 January 2024 made ex parte (on notice) seeking an order pursuant to GCR Order 15 r.7(2), substituting the Executrix of the Estate of the Defendant, for the deceased Defendant;

AND UPON reading the Plaintiff's First Affidavit sworn and filed 24 January 2024;

IT IS HEREBY ORDERED THAT:

1. Nealy Maddox Moxam, Executrix of the Estate of George Allan Moxam, Deceased, be substituted in place of the deceased Defendant.
2. The Plaintiff has leave to continue the proceedings against the substituted Defendant, with the title of proceedings in all future proceedings to record the Defendant as "Nealy Maddox Moxam, Executrix of the Estate of George Allan Moxam, Deceased (substituted by Order to carry on made on 25 January 2024)".
3. Under GCR Order 15 r.7(4) service of this Order on the substituted Defendant be dispensed with, and service of this Order on the Ogier law firm, attorneys of record for the Defendant, instructed by the Defendant's motor vehicle insurer, shall be sufficient, with no acknowledgment of service being necessary.
4. The Plaintiff shall in accordance with GCR Order 15 r.8(4)b) file this Order in the Register of Writs.
5. Costs of this application be in the cause.

DATED the 26th day of January 2024

FILED the 26th day of January 2024

Her Ladyship, Madam Justice Carter
Judge of the Grand Court

This Order is filed by Hampson and Company attorneys for the Plaintiff whose address for service is that of her said attorneys, at Apollo House East, 87 Mary Street, 4th Floor, P.O. Box 698, George Town, KY1-1107