

IN THE CAYMAN ISLANDS SUMMARY COURT



CAUSE NO. SC 78 OF 2019

BETWEEN: MILTON SYLVESTER McLEARY PLAINTIFF

AND: EATHON JAISE BANKS DEFENDANT

To: Mr. Eathon Jaise Banks
366 or 394 Raven Avenue
Spotts Newlands
Grand Cayman
Cel: 925 8899

Saxon Motor and General Insurance Company Ltd
14 Saturn Close, P.O. Box 1094
Grand Cayman KY1-1102 – 9472966

PLAINT



THIS PLAINT has been issued against you by the above Plaintiff in respect of the claim set out on the next page.

Within 14 days after service of this Complaint on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495GT, Grand Cayman, the accompanying Acknowledgment of Service Form stating therein whether you intend to contest this action. If you intend to contest this action, in whole or in part, you must set out full particulars of your Defence in the space provided in the Acknowledgment of Service Form.

If you fail to satisfy the claim or to return the Acknowledgment of Service Form containing full particulars of your defence, the Plaintiff may apply for a default judgment without any further notice to you.

Issued this 29th day of March, 2019

See overleaf for particulars of the Plaintiff's claim

PARTICULARS OF CLAIM

1. The Plaintiff was at all material times the lawful owner and operator of a 2007 dark blue Toyota Hiace Mini Van, license number 128065.
2. The Defendant was at all material times the owner and operator of a blue 2005 Daelim Roadwinis A 125cc motorcycle license number 165175. The Defendant holds a group 2 license. The Defendant is required to hold a group 1 license in order to lawfully operate the said motorcycle. The Defendant does not possess a group 1 license.
3. Both the Plaintiff and the Defendant had vehicle insurance coverage with Saxon Motor and General Insurance Company Ltd. ("Saxon").
4. On 23rd March, 2016 at around 5:34 p.m., the Plaintiff was on one of his usual routes as a taxi driver. He was on his way to West Bay from George Town with one passenger in his vehicle. He made a stop at West Shore Place on West Bay Road. Upon exiting the West Shore Plaza, a vehicle driving south towards George Town stopped to allow the Plaintiff to exit into the center turning lane.
5. The Plaintiff pulled into the center turning lane and whilst waiting for the northbound lane to clear, suddenly and without warning the Defendant drove his motorcycle into the Plaintiff's vehicle causing the right frontal section including the front bumper to receive damage.
6. The Defendant was coming from West Bay and heading south towards George Town. He was riding his motorcycle in the center turning lane as if it was a regular driving road.
7. The Plaintiff has been driving for over 39 years and maintains a clean driving record. He has been a taxi driver for about 7 years and had comprehensive insurance coverage with Saxon's at the time of the accident. He has not had any accident claims over the years

and enjoyed the benefit of 60% discount on the annual premium of his comprehensive motor vehicle insurance policy number 04132012-ky-012846 with Saxons. His annual premium was CI\$800.00 and was last paid on 12 April 2017.

8. As a result of the said accident, the Plaintiff has lost his "no claim bonus" benefit and his insurance premium has been increased as a result of the accident. The Plaintiff also lost his comprehensive coverage on his vehicle as a result of the Defendant's negligence.
9. The accident was caused by the negligence and unlawful driving of the Defendant.

PARTICULARS OF NEGLIGENCE

10. The Defendant was negligent in that he:-
 - (a) drove his motorcycle too fast in all the circumstances;
 - (b) unlawfully drove his motorcycle using the center turning lane as a regular driving lane;
 - (c) failed to apply his brakes properly or any at all;
 - (d) failed to heed the presence of the Plaintiff's vehicle that was stationery in the center turning lane
 - (e) failed to keep any or any proper lookout for the Plaintiff's vehicle or other users of the road;
 - (f) overtook using the center turning lane when it was unlawful for him to do so;
 - (g) failed to keep his motor vehicle under proper control;
 - (h) failed to keep a proper look out and should have seen the Plaintiff's vehicle in the center turning lane and could have and should have avoided hitting the Plaintiff's vehicle;

- (i) failed to take reasonable care to avoid colliding with the Plaintiff's vehicle which he saw or should have seen was likely to occur;
- (j) failed to apply his brakes properly and in a safe manner or any at all;
- (k) failed to exercise due care and skill in the management and control of his motorcycle;
- (l) had the last clear chance to avoid the collision but failed to avail himself of that chance;
- (m) failed to inform Saxon that he was the fault of the accident; and
- (n) caused the Plaintiff to lose his no claim bonus on his motor policy and caused his motor insurance premium to escalate;

BREACH OF STATUTORY DUTY

11. The Defendant operated his motor cycle in an unlawful manner on the road and is therefore in breach of the Cayman Islands Traffic Law 2011 Revision and the Traffic Regulations 2012 in that he:
- a) drove his motorcycle when he was not qualified to do so in that he did not possess the required licence to lawfully operate his motorcycle on the road and is therefore in breach of section 6 of the Cayman Islands Traffic Law (2011 Revision);
 - b) drove his motorcycle in an excessive rate of speed which exceeds the 25 miles per hour speed limit on that road at the time of the accident; and

- c) failed to observe the rules of the road as required by the Cayman Islands Road Code in that he drove his motorcycle in the shared center lane and used it as a regular driving lane and/or as a passing/overtaking lane contrary to section 3.3.12(v) of the Traffic Law 2011 [The Traffic Control Regulations, 2012].
12. Had the Defendant not been speeding and had he exercised reasonable care and control over his motorcycle, he might have and would have seen the Plaintiff's vehicle and could have avoided the accident.
13. The Plaintiff will continue to pay an increased sum for his annual vehicle insurance premium for the next few years or until he regains his status of an insured person with no claim against his insurance policy.
14. Further the Plaintiff intends to rely on the fact that the Defendant was charged in the Summary Court for careless driving.
15. As a result of the Defendant's negligence, the Plaintiff has suffered loss and damage.

PARTICULARS OF LOSS AND DAMAGE

*Loss of comprehensive coverage under Saxon policy	CI\$1,335.55
Continued loss of no claim bonus for next 2 years (\$1,335.55 x 2)	2,671.11
Amount paid to Vampt Motors for his portion of repair to vehicle	750.00
Accident Reconstructionist Report	250.00
Loss of Income as taxi driver for one week	3,000.00
Police Accident Report	100.00
Total Claimed	CI\$8,106.66

16. The Plaintiff is entitled to, and claims interests pursuant to the Judicature Law on the amounts found to be due to him at such rate and for such period as the Court thinks fit.

AND THE PLAINTIFF CLAIMS:

- (i) Damages in the amount of CI\$8,106.65
- (ii) Pre-Judgment and Post Judgment Interests.
- (iii) Costs

Dated this 29th day of March, 2019

Facey-Clarke & Associates
Facey-Clarke & Associates
Attorneys-at-Law for the Plaintiff

*difference in premium after losing no claim bonus

This Plaint was issued by Facey-Clarke & Associates, Attorneys-at-law for the Plaintiff herein whose address for service is that of his said Attorneys-at-law, Unit 119, Ground Floor, Elizabethan Square, George Town, Grand Cayman

IN THE CAYMAN ISLANDS SUMMARY COURT

CAUSE NO. SC OF 2019

BETWEEN: MILTON SYLVESTER McLEARY PLAINTIFF

AND: EATHON JAISE BANKS DEFENDANT

ACKNOWLEDGMENT OF SERVICE

1. State Defendant name and address

To:	Mr. Eathon Jaise Banks 366 or 394 Raven Avenue Spotts Newlands Grand Cayman Cel: 925 8899	Saxon Motor and General Insurance Company Ltd. 14 Saturn Close, P.O. Box 1094 Grand Cayman KY1-1102 – 9472966
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2. State whether the Defendant intends to contest the action:

Yes No

3. If you do not intend to contest the action, do you want time in which to pay the claim?

Yes No

4. If you do not intend to contest the action, in whole or in part, you must set out full particulars of your Defence overleaf.

Service of the Plaintiff is acknowledged accordingly.

See overleaf

Defendant or Attorney signature

Dated this day of , 2019

PARTICULARS OF DEFENCE

(Here set out in numbered paragraphs the grounds upon which the Defendant says that he is not liable to the Plaintiff, or is not liable for the full amount claimed)

REMINDER: This form must be taken or sent to the Court Office, P.O. Box 495GT, Grand Cayman within 14 days of receipt otherwise a default judgment may be entered against you.