



**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued : 30-Mar-2020
Délivré par voie électronique : 30-Mar-2020
Toronto

**UTHAYAVANAM MAHALINGAM
and MALARVILI NADARAJAH**

Plaintiffs

and

**TIFFANY ASHLEE SINGH and
JOACHIM VONDEHN o/a MUSKOKA HOME SERVICES**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

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IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$500.00 for costs, within the time for serving and filing your statement of defense you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date:

Issued By: _____
Local Registrar

Address of Court Office
330 University Ave.
Toronto ON M5G 1R7

TO: **TIFFANY ASHLEE SINGH**
1070 HEWITT STREET
GRAVENHURST, ON P1P 1T8

AND
TO: **JOACHIM VONDEHN o/a**
MUSKOKA HOME SERVICES
1070 HEWITT STREET
GRAVENHURST, ON P1P 1T8

THE PLAINTIFFS CLAIM:

- (a) General and Special Damages in the sum of \$1,000,000.00;
- (c) Prejudgment interest pursuant to the provisions of the *Courts of Justice Act*, R. S. O. 1990, C. C. 43 as amended;
- (d) Costs of this action on a substantial indemnity basis, plus Harmonized Sales Tax;
- (e) Such further and other relief as this Honourable Court may deem just.

THE PARTIES

1. The Plaintiff, Uthayavanam Mahalingam, (“Uthayavanam”), resides in the Town of Ajax, in the Province of Ontario, and was at all material times the operator of a black 2014 Mitsubishi motor vehicle bearing Ontario plate number BVMF316 (hereinafter referred to as the “Plaintiff’s motor vehicle”).
2. The Plaintiff, Malarvili Nadarajah, (“Malarvili”), resides in the Town of Ajax, in the Province of Ontario, and was at all material times the registered owner and front seat passenger in the Plaintiff’s motor vehicle.
3. The Defendant, Tiffany Ashlee Singh, (“Tiffany”), resides in the City of Gravenhurst, in the Province of Ontario, and was at all material times the operator of a grey 2008 Nissan motor vehicle bearing Ontario Plate number CEKE281 (hereinafter referred to as the “Defendant’s motor vehicle”).

4. The Defendant, Joachim Vondehn o/a Muskoka Home Services, (“Joachim”), resides in the City of Gravenhurst, in the Province of Ontario, and was at all material times the registered owner of the Defendant’s motor vehicle.

THE COLLISION

5. On or about April 20, 2019, the Plaintiff’s motor vehicle was travelling in an eastbound direction on Finch Avenue, at or near its intersection with Markham Road, in the City of Toronto, in the Province of Ontario. The Defendant’s motor vehicle was also traveling in an eastbound direction on Finch Avenue. Suddenly and without warning, the Defendant’s motor vehicle made a lane change and violently collided with the Plaintiff’s motor vehicle.
6. The Plaintiffs state that the collision aforementioned was caused by the negligence of the Defendant Tiffany, for whom in law the Defendant Joachim, is also liable. The particulars of such negligence are as follows:

AS AGAINST TIFFANY:

- (a) She drove carelessly;
- (b) She made an unsafe lane change;
- (c) She failed to slow down or stop so as to avoid a collision with the Plaintiff’s motor vehicle;
- (d) She failed to keep a proper or any lookout;
- (e) She was travelling at an excessive rate of speed considering the circumstances and as such he could not control the Defendant’s motor vehicle;
- (f) She failed to keep the Defendant’s motor vehicle under proper control;

- (g) On the occasion in question she was an incompetent driver lacking in reasonable skill and self-command and ought not to have attempted to operate a motor vehicle;
- (h) She failed to have the brakes on the Defendant's motor vehicle in proper working order, or in the alternative, she failed to apply them properly or at all;
- (i) She failed to give any warning to the Plaintiffs of the approach of the Defendant's motor vehicle although such warning was reasonably necessary under the circumstances;
- (j) She failed to slow down or to stop or turn sufficiently to the right or left so as to avoid striking the Plaintiff's motor vehicle;
- (k) She could have and should have seen the Plaintiff's motor vehicle and she could have and should have avoided the accident;
- (l) She failed to take reasonable care to avoid an accident which she saw or should have seen was likely to occur;
- (m) She failed to exercise due care and skill in the management of the Defendant's motor vehicle;
- (n) She failed to observe the rules of the road as required by the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended;
- (o) She had the last clear chance to avoid the collision and failed to avail herself of that chance;
- (p) She failed to have the Defendant's motor vehicle in a fit and proper condition, suitable for its safe operation on a highway;
- (q) She failed to give any adequate signal or warning to the Plaintiffs of her approach or intended course;
- (r) By exercise of reasonable care, she might have and could have seen the Plaintiff motor vehicle and could have avoided the collision;
- (s) She voluntarily permitted herself to arrive at such a condition, resulting from the consumption of alcoholic beverages, or from fatigue, that her normal faculties, apperception, will and judgement were impaired to such an extent that when driving a motor vehicle, she was a menace to herself and to the public;
- (t) She permitted herself to arrive at such a condition from drinking alcoholic beverages, or absorbing drugs, or from fatigue that her normal faculties

apperception, will and judgement were so affected that she no longer had the capacity to operate a motor vehicle with the caution characteristic of a reasonably careful driver who has not consumed such beverages or absorbed such drugs or who is not compromised by fatigue; and

- (u) On the occasion in question, she was distracted by the radio, cassette player, CD player, cellular telephone or a combination thereof.

AS AGAINST JOACHIM:

- (a) S/he failed to have the Defendant's motor vehicle in a fit and proper condition, suitable for its safe operation upon a highway;
- (b) S/he permitted the Defendant, Tiffany, to operate the Defendant's motor vehicle when s/he knew or ought to have known that, under the circumstances, Tiffany was an incompetent driver lacking in reasonable skill and self-command who ought not to have attempted to operate the Defendant's motor vehicle;
- (c) S/he permitted the Defendant, Tiffany, to operate the Defendant's motor vehicle when s/he knew or ought to have known that she was incapable of operating the Defendant's motor vehicle with the caution and care necessary having regard to the traffic and weather conditions there and then existing;
- (d) S/he failed to have the brakes, steering mechanism and/or other equipment on the Defendant's motor vehicle in a proper working order; and
- (e) S/he negligently entrusted the Defendant's motor vehicle to the Defendant, Tiffany, when s/he knew or ought to have known that he had an extensive driving record and was a poor driver.

INJURIES AND IMPAIRMENTS OF UTHAYAVANAM:

7. As a result of the aforesaid collision, Uthayavanam has sustained serious and permanent impairment of important physical, mental and psychological functions which include the following serious and lasting permanent injuries:

- (a) Headaches;
- (b) Neck pain;
- (c) Shoulder pain;

- (d) Sprain and strain of shoulder girdle;
- (e) Sprain and strain of lumbar spine;
- (f) Back pain;
- (g) Sleep disorders;
- (h) Nervousness;
- (i) Fatigue;
- (j) Dizziness;
- (k) Chronic pain;
- (l) Anxiety;
- (m) Stress;
- (n) Sadness;
- (o) Depression; and
- (p) Frustration.

INJURIES AND IMPAIRMENTS OF MALARVILI:

8. As a result of the aforesaid collision, Malarvili has sustained serious and permanent impairment of important physical, mental and psychological functions which include the following serious and lasting permanent injuries:

- (a) Headaches;
- (b) Neck pain;
- (c) Shoulder pain;
- (d) Sprain and strain of shoulder girdle;
- (e) Sprain and strain of ribs and sternum;

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- (f) Back pain;
- (g) Back pain;
- (h) Sleep disorders;
- (i) Nervousness;
- (j) Fatigue;
- (k) Dizziness;
- (l) Chronic pain;
- (m) Anxiety Disorder;
- (n) Stress;
- (o) Sadness;
- (p) Depression; and
- (q) Frustration.

DETRIMENTAL IMPACT ON UTHAYAVANAM:

9. As a result of the injuries sustained, Uthayavanam has been forced to significantly limit his activities of daily living and his ability to carry on a normal life.
10. As a result, Uthayavanam has sustained:
- (a) A significant loss of past income;
 - (b) A significant loss of future income;
 - (c) A significant loss of competitive advantage in the future workplace; and,
 - (d) A significant reduction of future earnings.

11. As a further result of the injuries sustained by Uthayavanam as a direct result of the accident, he will remain unemployed or underemployed in the future.

12. As a further result of the injuries sustained by Uthayavanam, as a direct result of the collision, he:
 - (a) Has sustained a loss of enjoyment of life;
 - (b) Has sustained a loss of amenities of life;
 - (c) Is unable to participate in recreational activities;
 - (d) Is unable to participate in social activities; and
 - (e) Is unable to participate in household activities,at all, or to the extent to which he participated, prior to the collision, and has had to incur expenses with respect to household activities, the full particulars of which are not known at this time but will be provided prior to the Trial of this matter.

13. As a further result of the injuries sustained by Uthayavanam, as a direct result of the accident, he has, and will continue to undergo:
 - (a) Therapy;
 - (b) Rehabilitation;
 - (c) Psychological counseling;
 - (d) Chronic Pain Management
 - (e) X-rays and other radiological examinations;
 - (f) Ingestion of medication; and
 - (g) Other forms of medical treatment and healthcare,

and has had to incur, and will incur expenses with respect to the foregoing, the full particulars of which are not known at this time but will be provided prior to the Trial of this matter.

DETRIMENTAL IMPACT ON MALARVILI:

14. As a result of the injuries sustained, Malarvili has been forced to significantly limit her activities of daily living and her ability to carry on a normal life.

15. As a result, Malarvili has sustained:
 - (e) A significant loss of past income;
 - (f) A significant loss of future income;
 - (g) A significant loss of competitive advantage in the future workplace; and,
 - (h) A significant reduction of future earnings.

16. As a further result of the injuries sustained by Malarvili as a direct result of the accident, she will remain unemployed or underemployed in the future.

17. As a further result of the injuries sustained by Malarvili, as a direct result of the collision, she:
 - (a) Has sustained a loss of enjoyment of life;
 - (b) Has sustained a loss of amenities of life;
 - (c) Is unable to participate in recreational activities;
 - (d) Is unable to participate in social activities; and

(e) Is unable to participate in household activities, at all, or to the extent to which he participated, prior to the collision, and has had to incur expenses with respect to household activities, the full particulars of which are not known at this time but will be provided prior to the Trial of this matter.

18. As a further result of the injuries sustained by Malarvili, as a direct result of the accident, she has, and will continue to undergo:

- (h) Therapy;
- (i) Rehabilitation;
- (j) Psychological counseling;
- (k) Chronic Pain Management
- (l) X-rays and other radiological examinations;
- (m) Ingestion of medication; and
- (n) Other forms of medical treatment and healthcare,

and has had to incur, and will incur expenses with respect to the foregoing, the full particulars of which are not known at this time but will be provided prior to the Trial of this matter.

19. The Plaintiffs state that they have sustained permanent serious impairments of important physical, mental and/or psychological functions and/or permanent serious disfigurement within the meaning of Section 267.5(5) of the *Insurance Act*, R.S.O. 1990, c. I.8, as amended, such that the Defendants are liable for all the injuries and losses sustained by them as a result of the aforementioned motor vehicle collision.

20. The Plaintiffs further plead and rely on the *Negligence Act*, R.S. O. 1990, c. N.1., as amended, and the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended.

PLACE OF TRIAL:

21. The Plaintiffs propose that this action be tried at Toronto, Ontario

March 30, 2019

**GOSAI LAW
PROFESSIONAL CORPORATION**

8770 The Gore Road, Suite 2
Brampton, ON L6P 0B1

Nital S. Gosai 57421K

Tel: (905) 595-2225

Fax: (905) 595-2226

Solicitors for Plaintiffs

MAHALINGAM et al
Plaintiffs

-and-

SINGH et al
Defendants

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

**GOSAI LAW
PROFESSIONAL CORPORATION**

8770 The Gore Road, Suite 2
Brampton, ON L6P 0B1

Nital S. Gosai, 57421K
Tel: (905) 595-2225
Fax: (905) 595-2226

Solicitors for the Plaintiffs