

SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. SLUHCV 2007/0941

BETWEEN:

VERA ANN ALEXANDER

Claimant

AND

LAURENCIN CLERY

Defendant

APPEARANCES:

Mr. David E.M. Du Boulay and with him Mr. Thomas Theobalds for the Claimant
Ms. Esther Greene-Ernest for the Defendant

2009: November 24th

2010: January 12th

JUDGMENT

[1] **WILKINSON, J:** The Claimant by claim form filed November 2nd 2007, and statement of claim filed on even date, claimed that she was the owner of a silver Daihatsu Charade motor vehicle registration number PA 7580. She alleges that due to the negligent driving of the Defendant on April 16th 2005, there was a collision on the Vide Boutielle Highway and as a consequence of which she has suffered loss

and damage. She claims special damages in the sum of \$11,490.00, loss of use in the sum of \$2,625.00, interest, costs and further or other relief. The Defendant was the owner of a red Toyota Levin motor vehicle registration PD 2253, filed a defence on December 20th 2007 denying any negligence on his part for the collision, and counterclaimed alleging that it was the Claimant's negligent driving which caused or contributed to the collision. He claims special damages in the sum of \$1,525.00, interest, costs and further or other relief.

Issues

The issues to be determined by the Court are as follows:-

- (a) Who is liable for the accident?
- (b) Was there contributory negligence by either or both parties?
- (c) What is the quantum of damages, if any, the Court should award?

- [2] Both Parties agreed on a number of matters, they being that the highway consisted of 3 lanes, 1 lane out of Castries and 2 lanes into Castries; the collision occurred at approximately 12.30p.m; the traffic was moderate on the highway; they had both traveled pass a motor vehicle collision on the said highway and which collision saw the police directing all traffic into the inner lane. The Defendant stated that it was a sunny afternoon and this was not disputed.
- [3] The Claimant's evidence is that she is a self-employed florist, and owner of Summers Flowers. The Claimant both resides and has her place of business at Summerdale gap. She is a driver with over 20 years experience. On April 16th 2005, she was travelling on the highway towards Castries on her way home. Her 2 sons were with her.
- [4] After the police had directed the Claimant to the inner lane, she remained there until the section of the highway in front of the entrance to the Comprehensive School and at this point she drove past a grey motor vehicle which was in the outer lane, put on her left indicator as she switched to the outer lane.
- [5] Upon passing the entrance to the Comprehensive School and then approaching the

section of the highway directly in front of the Baptiste Church, she had glanced in her rearview mirror and noticed a red motor vehicle in the distance. It appeared near the Monplaisir Supplies and it was behind the grey motor vehicle that she had passed prior to switching lanes. Having turned her attention back to the road in front of her and as she was about to indicate her intention to go into the Summerdale gap, she heard a loud noise. The next thing she saw was her motor vehicle heading straight for the natural bedrock wall that lines the highway in front of Wayne's Motorcycle Centre. Despite her best efforts, her motor vehicle crashed into the wall.

[6] At trial she stated that her best effort was that she used her steering wheel to try and control the motor vehicle. Her motor vehicle ended up in the drain that runs alongside the outer lane, facing the opposite direction from that in which she was travelling. She had no recollection of spinning around.

[7] The Claimant blacked-out and when she came to, her husband was calling to her. She was trapped between the motor vehicle and the wall. Both she and her sons sustained various personal injuries and were taken to hospital.

[8] Her motor vehicle was a write-off and given a salvage value of \$1,000.00. She was inconvenienced, and without the use of her motor vehicle for 21 days before a replacement could be arranged.

[9] Under cross-examination, paragraph 3 of her statement of claim was put to her. She was asked if she agreed that it differed from her version of events in her witness statement. She agreed that it did. Paragraph 3 reads:

"The Claimant, having checked her rear view mirror in order to ensure that she had ample space, attempted to switch lanes in order to turn into the gap leading to her home at Summersdale...."

She further agreed that both versions as to how the collision occurred could not be true. She stated that her statement as to how the collision happened in her witness statement was the true version and that she was not mistaken as to the facts in her statement of claim.

- [10] Under cross-examination she stated that the point of impact was approximately 66 feet from the Summersdale Gap. That she had looked in her rearview mirror before passing the grey motor vehicle in the outer lane, and after passing the grey motor vehicle, she looked again and had only seen the grey motor vehicle behind her. As soon as she passed the grey motor vehicle, she went into the outer lane. The grey motor vehicle was driving very slowly and this she stated gave her sufficient time to prepare to enter the Summersdale gap. She could not identify how far behind the red motor vehicle was, but knew it to be behind her. She had indicated and switched lanes because she thought there was enough time and space.
- [11] Also under cross-examination she stated that she was aware that the rear of her motor vehicle was hit on impact. It was hit on the right side. This was not something she remembered but saw when she looked at her motor vehicle after she coming out of it at the collision site. Her witness Mr. Gustave Donat, the driver of the grey car, was her close friend.
- [12] On March 4th 2008, the Claimant filed a List of Documents which included 12 listed items. With the exception of extract of the conviction #2968/05, the items were not pursuant to CPR 2000 Part 29.5(1) (g) either referred to in the witness statement or sufficiently identified. As a consequence of the failure to identify the items in the List of Documents counsel for the Claimant at trial made an oral application pursuant to CPR 2000 Part 29.9 to amplify the witness statement. Leave was granted to amplify after counsel for the Claimant and the Defendant settled between themselves the perimeter as to which documents would be allowed. Mention is only made of this fact to show the difficulty that counsel can be faced with where, as here, counsel for the Claimant appeared to have assumed that a filed List of Documents was automatically incorporated into the Claimant's evidence notwithstanding that there was failure to comply with CPR 2000 Part 29.5(1)(g).
- [13] Mr. Gustave Donat gave evidence on behalf of the Claimant. He stated that he could not read because his sight was not "too good". He said that he was 4 years old when he lost sight in his right eye, and he was between the ages of 50 to 60 years old when he started losing his sight in his left eye. He is presently 70 years of age.

- [14] He was employed with Hunte's International Packing and Storage and responsible for the warehouse located at Bissee. It was about 12.30p.m and he was travelling towards Castries to work at Bissee. He makes the trip on the Vide Boutielle Highway 4 to 6 times per day in connection with his job. He was driving his motor vehicle, a silver Nissan registration number PA 6442. He was travelling in the outer lane. As he passed the Comprehensive School a silver motor vehicle that was travelling in the inner lane passed him on the right and moved in front of him in the outer lane. Shortly after this, as he approached Wayne's Motorcycle Centre a red motor vehicle overtook him at tremendous speed and swerved into the outer lane in front of him. The red motor vehicle collided with the rear left side of the Claimant's motor vehicle causing it to spin around, hit the wall, fall into the drain with 2 wheels off the road, and facing the Gros Islet direction.
- [15] Under cross-examination he stated that as he was coming down from the Comprehensive School to Castries, traffic was "a little bit rough, he saw a silver motor vehicle was ahead of him and it was the only motor vehicle ahead of him at the time. When he got near to the Comprehensive School, there was no traffic in the inner lane. He could not say how far ahead of him the silver motor vehicle was ahead of him. He had slowed down to allow the silver motor vehicle to pass in front of him into the outer lane. He stated that after the silver motor vehicle went ahead of him, the red motor vehicle also went ahead of him. The red motor vehicle came from behind him, crossed in front of him. He could not gauge how far the red motor vehicle was from him. He also described the Claimant as "our people in this area".
- [16] The only evidence for the Defendant was provided by him. He was driving his motor vehicle in the direction of Castries. He was in the outer lane in the vicinity of the Castries Comprehensive School when the Claimant who was travelling in the inner lane, and in the same direction as himself, suddenly and without warning, changed lanes and drove into the path of his motor vehicle, colliding with it. The Claimant had not indicated her intention and there was nothing he could have done to avoid the collision. The highway lanes are relatively narrow and separated by white lines. He was driving within the speed limit. His motor vehicle sustained damage to the right front fender, right rim, right park light, right side of his bumper. His motor vehicle was repaired by St. Aimee's Auto Repair & Motor vehicle Rental at the cost of \$1,525.00. He said that he had acted as a reasonable prudent driver and the collision was

caused or contributed to by the negligence of the Claimant. The Defendant exhibited to his witness statement a receipt stamped received December 5, 2007 and issued by St. Aimee's Auto Repair & Motor Vehicle Rental. The receipt described repairs as being to the right front fender, three rims, spraying, replacement of fender light, and for the total cost of \$1,525.00.

[17] Under cross-examination he reiterated that the Claimant had swerved onto him coming around the corner by the Castries Comprehensive School. He stated that after the collision the Claimant's motor vehicle spun around and dropped in the drain facing in the direction of Gros Islet. He observed that the left side of the Claimant's motor vehicle was damaged.

[18] The Claimant and her witness, Mr. Donat, identified the area of impact and damage to the Claimant's motor vehicle as being in different places. The Claimant stated that on impact her motor vehicle was hit on the right side. Mr. Donat stated the Defendant collided with the rear left side of the Claimant's motor vehicle. Mr. Donat's statement on this matter is supported by the Defendant who stated that the left rear of the Claimant's motor vehicle is the area that made contact with his motor vehicle and that he saw the left side of the Claimant's motor vehicle damaged. The Court accepts that the impact was on the left rear to the Claimant's motor vehicle.

Findings

[19] The damage to the 2 motor vehicles suggests that the Claimant was in the position set out in her statement of claim and which is, that she was attempting to switch lanes. In this attempt the left rear of her motor vehicle as she was moving over to the outer lane connected with the front right of the Defendant's motor vehicle which was already in the outer lane.

[20] I accept Mr. Donat's evidence that the Defendant's motor vehicle overtook him at tremendous speed and swerved in front of him. He was therefore present where prior he had not been seen when the Claimant checked her rearview mirror before attempting to switch lanes. Secondly, I believe that the tremendous speed at which the Defendant was travelling when contact occurred between the two motor

vehicles contributed to or caused the Claimant's motor vehicle to spin around in the manner that it did and alight in the drain facing the Gros Islet direction.

- [21] Contributory negligence was specifically pleaded by the Defendant in his defence and counterclaim. I find that based on the evidence, both parties were responsible for the collision in some way and the level of damage that followed. The Claimant in attempting to change from the inner lane to the outer lane had the greater responsibility to ensure that it was safe for her to do so. The Defendant was travelling at tremendous speed and there is no evidence that he took any measures to avoid the accident.

Conclusions

- [22] The sole remaining issue is that of assessing apportionment of responsibility for the accident. As Denning L.J said in *Jones v. Livox Quarries Ltd.*¹

“Although contributory negligence does not depend on a duty of care, it does depend on foreseeability. Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man, he might be hurt himself; and in his reckonings he must take into account the possibility of others being motor careless.”

This Court finds that the Claimant was 60 percent responsible for the collision and Defendant was 40 percent responsible for the collision.

- [23] The Claimant claims an aggregate of \$14,115.00 as particularized in her statement of claim. The total award to the Claimant will be \$14,115.00 less 60 percent making an award of \$5,646.00.

¹ [1952] 2Q.B. 608 at 615

[24] The Defendant claims \$1,525.00 as particularized in his counterclaim. The total award to the Defendant will be \$1,525.00 less 40 percent making an award of \$915.00.

[25] For simplicity, the thing to do is offset the damages between the Parties. The Court's order is as follows:

- (1) Judgment for the Claimant in the sum of \$4,731.00.
- (2) Interest at the rate of 6 percent per annum from the November 2nd 2007 to date of payment.
- (3) No order as to costs.

Rosalyn E. Wilkinson
High Court Judge