

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CIVIL SUIT NO. 492 OF 2000

BETWEEN:

LEROY LEWIS

Claimant

vs

BERNARD MASCOLL

Defendant

Appearances:

Ms. La Celia Prince for the Claimant

Mr. Stephen Williams for the Defendant

2002: March 19

2003: April 7

JUDGMENT

[1] **BRUCE-LYLE, J:** Mr. Leroy Lewis is the Manager of the New Montrose Hotel, Kingstown, St. Vincent. On the 6th day of December 1999 he was walking along Halifax Street, opposite the Court House, and heading in a southerly direction to the bottom of town. He was therefore on the left side of the said street going towards Bottom Town. The road on that left side was barricaded by galvanized sheets as the new market was then under construction. As a result there were no kerbs, and vendors were on the road near the galvanized wall constructed around the construction site of the new market. The vendors were thus occupying part of the road. It was also around Christmas time.

[2] Being Christmas time, there were a lot more pedestrians, as well as vehicular traffic on the road. Mr. Lewis said he was heading towards the pedestrian crossing at the National Commercial Bank. His intention was to use the pedestrian crossing to get to the Vinlec office. To do this he had to go past the

vendors and the pedestrians on the road. As he stepped past a pedestrian ahead of him on the road, he was struck at the back of his right leg by a vehicle driven by Mr. Bernard Mascoll, the defendant. He said Mascoll did not sound his horn, nor did he hear the sound of the vehicle.

[3] Lewis said that the force of the vehicle striking him was so great that he somersaulted a couple of times on the road, scattering the contents of his briefcase. He tried to stand up and realized he could not put any pressure at all on his right leg. He could not walk. He also received injuries to his elbow. Lewis said Mascoll stopped and tried to render assistance, but he Lewis called his brother in law on his cell phone for assistance and he was taken straight to the hospital, but not before awaiting the arrival of the Police to the scene.

[4] At the hospital, Mr. Lewis said he experienced severe pain and despite that, was told by a nurse that he would have to wait an hour or two before he could be seen by a doctor. He then proceeded to the Medical Imaging Centre at the Russell Building for X-rays and where a temporary bandage was tied to his right leg by a doctor. The next morning he consulted Dr. Cyrus who after reviewing the X-rays, provided him with a medical report. The X-rays and the medical report were tendered into evidence as Exhibits L.L. 1 and L.L. 2 respectively.

[5] Mr. Lewis further said that Dr. Cyrus put his whole right leg in a cast; from his upper thigh to his ankle. This cast was to remain on his right leg for six weeks. He said after the cast was removed, he had to wear a brace for another three to four weeks, and used crutches for movement between his bedroom and living room as he had to remain at home. This he said hampered both his business and sporting activity. He described himself as an avid squash player. He said up until trial he still suffered intermittent pain in the knee, which results in him having to use a knee brace, but not enough pain to cause him to use painkillers. He gave his age as 52 years, and that before the accident he never had to use a knee brace; but that he still plays squash but not as often as before.

[6] Bernard Mascoll, the defendant gave his side of the story. He said that he operated a minivan, and that on the 6th day of December 1999 at about 11:20 a.m. he was driving down Halifax Street in the direction of the National Commercial Bank. As he got in front of the Court House, and driving on the left hand side of the road, he saw people and vendors on the said left hand side of the road. He was proceeding very slowly at about 5 m.p.h. Because of the pedestrians and vendors on the left side of the road he veered to the right causing his right wheels to be over the center line of the road.

[7] He said he knew Mr. Lewis, and saw him walking down in the same direction, and same side of the road as he was. Then he said, Lewis made a sudden right turn, stretching his right foot out as if to cross the road. In doing so Lewis stepped right in front of the vehicle and he struck him instantaneously and then stopped his vehicle. He said the whole thing happened in an instant. He stated that the lower bumper of his vehicle struck Lewis on the side of his lower right thigh and not behind his thigh. He said Lewis fell and rolled onto his left back shoulder.

[8] He said he went to Lewis, asked him if he was okay, and offered to take him to the hospital, but Lewis refused and said he could walk and that it was okay. He said Lewis got up and walked to the other side of the road. The Police then came on the scene. Mascoll further said that he was never charged by the police for any offence resulting from this accident. He described himself as a driver for the past 34 years, and that in his opinion Mr. Lewis caused this accident, and that he Mascoll did not drive badly that day.

ISSUES:

[9] The issues for this Court to determine are:

- (a) did Mr. Mascoll drive negligently and dangerously so as to cause the accident; or
- (b) was Mr. Lewis the cause of the accident as stated by Mr. Mascoll in which case Mr. Mascoll escapes liability and therefore does not pay any damages as claimed by Mr. Lewis.

EXAMINATION OF THE EVIDENCE

[10] Looking at the evidence of Mr. Lewis in his witness statement, examination in chief, and under cross-examination, it is clear that part of the left side of Halifax Street in the vicinity of the Court House had been taken over by pedestrians and vendors due to the ongoing construction of the new market. It meant therefore that both pedestrians and vehicle drivers had to exercise caution when driving or moving along that stretch of Halifax Street.

[11] Mr. Lewis admits that, in a bid to pass around some pedestrians, he stepped more into the right lane of the road and that is when he was struck from behind.

[12] Mr. Mascoll in turn confirmed the busy nature of Halifax Street at 11:20 a.m. that morning in question. He said as a result of that, he was driving very slowly at about 5 m.p.h. when Lewis suddenly made a right turn, stretched his foot out as if to cross the road, and the collision occurred.

[13] I find from that evidence that Mr. Lewis moved far more into the road than was permitted in the circumstances as described, whether he was crossing the road or not. This is what led to the collision with Mascoll's vehicle.

[14] Mascoll maintained his story in relation to the speed of his vehicle at 5 m.p.h. and the fact that he was driving over the center line of the said road with his vehicle partly in the right lane. He stated that Lewis did not cartwheel or somersault on the said road when the collision occurred, but first fell to his left and landed onto

his left shoulder. I am inclined to find on a balance of probabilities having regard to the circumstances of the road on the day in question, that if Lewis did in fact somersault on colliding with Mascoll's vehicle as he described, his injuries would have been far more extensive than what was posited in his evidence and in the medical report from Dr. Cyrus. I find and do hold that Mascoll was not driving at excessive speed as he stated in his defence, and there is no evidence to the contrary.

[15] Mascoll again stated that because of the vendors and pedestrians encroaching onto the left hand of the road, he thought it prudent to move more to his right, as even tooting his horn did not elicit any response from the pedestrians. He did not recognize Mr. Lewis until he suddenly stepped out in front of the vehicle, and it was so sudden, he had no time to break. This in itself cannot be said to be negligent driving or driving without due care and attention, and here the evidence of Mr. Dempster Veira for the defence is of importance.

[16] Mr. Veira said in his evidence that he knew the defendant Mr. Mascoll and that on the day in question, 6th December 1999 between the hours of 11:00 a.m. and 11:30 a.m. he was travelling in the area described earlier in this judgment, on Halifax Street, Kingstown. He was headed in the direction of Singer Appliance Store where he was Manager. He had gone past the Hinds building and was just by the Court House fence when he saw a white minivan driven by Mr. Mascoll travelling in the opposite direction to him.

[17] He stated that because of construction work at the market, there was a galvanized fence cordoning off the market from the road. There were pedestrians travelling in both directions along that fence. He said as the white minivan was about 20 feet in front of him, someone came out of the crowd and was struck by the front of the white vehicle. The person fell to the ground. He, Mr. Veira, stopped his vehicle.

[18] He said the person got up immediately or quickly and limped in front of his vehicle over to the sidewalk next to the Court House. He stated that this person fell to the ground, on his knees and broke the fall with his hand and then got up. He maintained this version under cross-examination, which is clearly and strongly in support of Mr. Mascoll's version of events.

[19] Again Mr. Veira asserted that Mr. Mascoll was driving at between 10 m.p.h. to 15 m.p.h. Mr. Mascoll said he was doing 5 m.p.h. Even if we accept Mr. Veira's version of the speed at which Mascoll was driving, would that be indicative of excessive speed falling within the ambit of negligence? I say no. There is clear evidence, on a balance of probabilities that Mr. Lewis came suddenly in front of Mascoll's vehicle, and being struck on the back of his knee or on the right side of his knee is neither here nor there in the circumstances. The fact is he was struck. He suffered unfortunately from his injuries, but not serious enough to curtail his future engagement in his business or his sporting pursuits.

ORDER:

[20] In the circumstances I find no negligence on the part of the defendant, Bernard Mascoll, and hold him not liable for the accident and the injuries suffered by the claimant. I dismiss the claim accordingly and order costs to be paid to the defendant in the sum of \$1,500.00.

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Frederick Bruce-Lyle
HIGH COURT JUDGE

